TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902~~ 1903.

No. ~~236~~ 76.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE CENTRAL CROSSTOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 7, 1903.

(18,997.)

(18,997.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 346.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THE CENTRAL CROSSTOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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	Original.	Print
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As to the actual value of the tangible property of the company for the purposes of this proceeding	198	45

	Original.	Print
As to the testimony of Commissioners Priest, Stearns, and Leaycraft	253 271 304	81 90 112
As to testimony of Wells and Hobbs	270 302	90 111
That certiorari proceedings referred to in stipulations include all the special franchises and taxes now pending before the referee	271	90
That the report and supplemental reports made by the relators to the State Board of Tax Commissioners were made by direction of said board upon forms provided by the board	272	91
That the verified report and supplemental reports of the Metropolitan Street Railway and other companies are now regarded by the referee as evidence as to what was before the board in making its assessments	272	91
That copies of the special franchises of relator companies annexed to their report to the State board are correct copies of the originals and are received in lieu of the originals	301	110
That relator companies demanded information from the State Board of Tax Commissioners as to the amount of the assessment of the tangible property, and as to the principle adopted by the board in making valuations, etc.	301	110
That any relator company in certiorari proceedings now pending before the referee may read in evidence from testimony and proceedings in any other of the proceedings now pending before the referee, subject to objection and exception	301	110
As to testimony of Commissioner Priest concerning the relation between actual and assessed value of property in Westchester county	304	112
That the notices of assessment given to 27 other companies were similar to that of the Metropolitan Company except as to address and location of special franchises and amounts of assessments	305	113
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That all testimony given by the witness at this hearing as to the method of ascertaining the value of the special franchises is deemed to be given in all cases now pending before the referee	313	118
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As to the total assessed value of the real estate in the city of New York for the year 1900, and as to the percentage of the assessed values to actual values	366	153
That the Sixth Avenue railroad was affected by the laying out of Central park, as shown by Plaintiff's Exhibit No. 63	628	334

	Original.	Print
That annexed to return are true copies of the instruments constituting the special franchises of the relator company	629	335
That franchise of Central Crosstown Railroad Company was acquired under chapter 160, Laws 1873	629	335
That a true copy of chapter 160 Laws 1873 is annexed to return herein	630	335
That a true copy of the lease of Christopher and 10th St. R. R. Co. to Central Crosstown R. R. Company is in evidence	644	345
That any exhibit not set forth in full in this record may be exhibited in any court before which this proceeding may come at any time and may be considered by said court as if printed in full in these papers	659	354
That the foregoing record contains all the evidence taken before the referee in this proceeding	659	354

a Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 28th day of April, in the year of our Lord one thousand nine hundred and three, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur April 29th, 1903.

b THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Central Crosstown Railroad Company, Respondent,

ag'st

GEORGE E. PRIEST & Ors., Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.

Be it remembered, that on the 23rd day of March, in the year of our Lord one thousand nine hundred and three, George E. Priest & ors., tax commissioners, &c., the appellants in this proceeding came here into the court of appeals, by John Cunneen, attorney general, their attorney, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the third judicial department. And Central Crosstown Railroad Company, relator, the respondent in said proceeding, afterwards appeared in said court of appeals by George S. Bixby, its attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

c Whereupon, the said court of appeals having heard this proceeding argued by Mr. John Cunneen, attorney general and Mr. Wm. H. Wood, of counsel for the appellants, and by Messrs. Charles F. Brown, David B. Hill, Frank H. Platt and William H. Page Jr., of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is reversed, and that of special term affirmed, with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

d Therefore, it is considered that the said order be, and the same hereby is, reversed &c., &c., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into

the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

ALBANY, *April 29th*, 1903.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

Original.

Filed Mar. 23, 1903.

In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company, Respondent,
against
STATE BOARD OF TAX COMMISSIONERS, Appellants.

Papers on Appeal.

John Cunneen, attorney-general, attorney for appellants, capitol, Albany, N. Y.

George S. Bixby, attorney for relator-respondent, No. 71 Broadway, New York city.

Filed Mar. 23 1903.

Filed Albany county, N. Y. May 1 11.22 a. m. 1903 Clerk's office.

In the Court of Appeals of the State of New York.

Statement.

In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company, Respondent,
vs.
THE STATE BOARD OF TAX COMMISSIONERS, Appellants.

Appeal from an order of the appellate division of the supreme court, third department, granted on January 6, 1903, and entered in

the Albany county clerk's office on February 20, 1903, except from that part of said order which affirms the order of the special term therein upon the facts. The order appealed from affirms on the facts and reverses on the law an order of the special term made by Mr. Justice Herrick, and entered on July 15, 1902, confirming the report of the referee, Hon. Robert Earl, now deceased, and declares the assessment in question to be illegal, and void, and directs it to be stricken from the assessment roll.

g The report of the referee directed that the assessment of the special franchise of the relator be reduced to $392,414.31, and, as so reduced, be confirmed.

The order of reference directed the referee to take and report to the court such evidence upon the several issues of fact raised by the pleadings, as might be adduced before him with his findings of fact and conclusions of law.

The names of the original parties hereto are as above, and no change in them or their attorneys has taken place.

1 In the Supreme Court, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE Central Crosstown Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Petition.

To the supreme court of the State of New York:

The petition of the Central Crosstown Railroad Company respectfully shows to the court:

That at the times hereinafter mentioned it was, and still is, a railroad corporation created and existing under and pursuant to the laws of the State of New York, and has its principal office in the city of New York.

That on October 1st, 1899, it was, and still is, the owner of a street surface railroad or railroads constructed, maintained and operated in, upon and through certain streets, highways and public places in the borough of Manhattan, in the city of New York, together with the franchise, rights and permissions to construct, maintain and operate the same, which franchise, rights and permissions, together with the tangible property of said railroads situated in, upon, under or above said streets, highways and public places is known and denominated in the tax law of this State as a special franchise.

That since January 1st, 1900, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns have constituted, and still constitute the State Board of Tax Commissioners.

2 Your petitioner further shows that, pursuant to section 43 of the tax law of the State, and within thirty days after the said section took effect, it made a written report to said State Board of Tax Commissioners as to all matters required by said section to be reported

to said board, and has, in the manner required by law, made all reports and supplemental reports required by law or by said board to be made to it.

That it also reported to said board all statutes of the State, general or special, and all resolutions of the common council of the city of New York relating to said special franchise, and all provisions and conditions relating to the payment of percentages of the gross receipts from the operation of said railroad or of a gross sum into the treasury of the city of New York, which provisions of law were, by said statutes and resolutions made conditions to the acceptance of said special franchise and were agreed to by your petitioner and have always been fully performed.

That in said reports and supplemental reports made as aforesaid, your petitioner duly reported to said board that the tangible property included in said special franchise consisted of railroad structures, sub-structures, tracks and the iron thereof, and other fixtures permitted and authorized to be made, laid or placed in, upon, above or under said streets, highways and public places, and the value thereof based upon the costs of reproducing the same, as required by said board.

Your petitioner further shows that thereafter said State board, claiming to act pursuant to the tax law of this State, and claiming and alleging that the said special franchise owned by your petitioner as aforesaid, was subject to assessment in the city of
3 New York, proceeded to fix and determine the valuation thereof, and, as your petitioner is informed and believes, did, on or about the 20th day of March, 1900, fix and determine the valuation of said special franchise to be the sum of one million one hundred and ninety-seven thousand and twenty ($1,197,020) dollars, and did thereupon make the assessment of said special franchise at the sum aforesaid.

That immediately after making said assessment, said State board gave to your petitioner a notice in writing, stating, in substance, that such assessment had been made and that the total valuation of said special franchise was one million one hundred and ninety-seven thousand and twenty ($1,197,020) dollars, and that said State board would meet at its office in the city of Albany on the 10th day of April, 1900, at 10.00 o'clock a. m., to hear and determine any complaint concerning such assessment.

That pursuant to such notice, and at the time and place therein stated, your petitioner attended before said board;

That your petitioner, upon said hearing, requested to be informed by said board the amount which said board had determined to be the valuation of the tangible property of your petitioner, constructed in, upon, under or above the streets, included in the assessment of said special franchise, and the amount fixed and determined by said State board to be the valuation of the franchise, rights and permissions, to construct, maintain and operate such railroads upon said streets, highways and public places, as aforesaid, but that said State board refused to give your petitioner such information, and also

refused to state or to inform your petitioner the rule or method adopted and applied in ascertaining and determining the
4 said valuation. That your petitioner thereupon complained of said assessment and filed with said State board a written statement under oath, specifying the grounds of its complaint.

That your petitioner complained that said assessment was illegal, and specified, among the grounds of such illegality, in substance that all the provisions of the statute known as chapter 712 of the Laws of 1899, purporting to authorize the said State board to make an assessment of the special franchise of your petitioner were unconstitutional and void, and that the said State board had no jurisdiction, right or authority to make such assessment, and the said act does not prescribe any definite method of valuation and was so vague and indefinite that it cannot be administered by the taxing officers or enforced by the courts, and that statute did not provide any definite method or rule by which the said State board could value the franchise, rights or permissions to construct, operate and maintain the railroad of your petitioner included in its special franchise. The said assessment impaired the obligation of the contract by which said special franchise was acquired and is now owned and possessed and operated by your petitioner and violates, in this respect, the Federal and State constitutions. That said assessment was erroneous by reason of over-valuation and that the extent of such over-valuation was one million one hundred and ninety-seven thousand and twenty ($1,197,020) dollars. That said assessment had been made at a higher proportionate valuation than the assessment of other special franchises by the same officers, and that it had been made at a higher proportionate valuation than the assessment of other real estate in the city of New York, and
5 also at a higher proportionate valuation than other real estate throughout the State of New York.

Your petitioner further shows that thereafter and on or about the 30th day of April, 1900, the said State board, still claiming to act pursuant to tax law of the State, and that the railroad of your petitioner and the franchise, rights and permissions to construct, maintain and operate the same were subject to assessment in the city of New York, finally determined the valuation of said special franchise to be the sum of five hundred and eighty-five thousand six hundred and ninety-three ($585,693) dollars, and on or about April 30th, 1900, filed with the department of taxes and assessments in the city of New York, a written statement of such valuation as finally fixed and determined by said State board and duly verified by the secretary thereof, and at or about the same time gave notice in writing to your petitioner that such written statement had been filed with the department of taxes and assessments in the city of New York.

Your deponent further shows that by the provisions of the Greater New York charter, the commissioners of taxes and assessments of the city of New York constitute the board of taxes and assessments for said city and also are the department of taxes and assessments in the city of New York, and were required by law after

the 30th day of April in each year to prepare assessment rolls for the several parts of said city, containing valuations of real and personal property and to certify and deliver said assessment rolls to the municipal assembly of said city on the first Monday of July in each year. That said commissioners of taxes and assessments since the 30th day of April last, prepared the assessment rolls of said
6 real and personal property of the several parts of said city for the year 1900, and entered thereon before the final review or certification of such rolls by them, the valuation of said special franchise of your petitioner as so fixed by the said State board as aforesaid, and having annexed thereto their certificate that the said rolls were correct and in accordance with the entries in the several books of record in the said department, duly verified the same and delivered the said assessment rolls to the municipal assembly of said city, as required by law, on the first Monday of July, 1900.

Your petitioner further shows upon information and belief that the said State board, in making the assessment aforesaid of said special franchise, fixed and determined the value thereof at a sum equal to the full and entire value thereof.

That the tax law of the State defines, declares and makes special franchise for the purpose of assessment and taxation land, real estate or real property.

That in the city of New York no real estate or real property is assessed at its full value, but that all land, real estate and real property in said city, as elsewhere in the State, is assessed at a valuation equal to about sixty per cent. of its full value. That it is the official duty of the said State board to investigate and examine the methods of assessment throughout the State and to furnish to local assessors information to aid them in making assessments to real and personal property, and said State board and each of its members well knew in making the assessment of said special franchise at its full value that land and real estate within the State, and especially within the city of New York, was assessed at less than its full value,
7 and notwithstanding such knowledge and information and well knowing that to assess the special franchise, as aforesaid, of your petitioner at its full value would be to assess it at a higher proportionate valuation than other real estate in said city, made the assessment aforesaid.

Your petitioner further shows that, claiming to be aggrieved by said assessment and alleging that it will be injured thereby, it specifies:

First. That said assessment is illegal in that said State board had no jurisdiction or authority to make such assessment for the reason that the statute, namely, chapter 712 of the *of the* Laws of 1899, under and pursuant to which said State board claims the power and authority to act in the matter, and to fix and determine the valuation of said special franchise for the purpose of assessment and taxation, is in violation of section 2 of article 10 of the constitution, and also with the provisions of the Constitution of the United States, and is void,

and impairs the obligations of the contract by which said special franchise was acquired and is now held by your petitioner.

That said assessment is also illegal for the reason that said State board refused to inform your petitioner of the valuation fixed and determined by it of the tangible property included in said special franchise, or of the rule or method adopted and applied by said State board in fixing and determining the valuation of the franchise, rights and permissions to construct, maintain and operate said railroad upon said streets, highways and public places as aforesaid, and that by such refusal your petitioner was deprived of such a hearing as it was entitled to by the constitution of the State before a final assessment could be made against it.

8 Second. That said assessment is erroneous by reason of over-valuation, and the extent of such over-valuation is five hundred and eighty-five thousand six hundred and ninety-three ($585,693) dollars.

Third. That said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other land and real estate in the city of New York, and of other land and real estate in the State of New York outside of said city, and your petitioner specifies all the real estate in the city of New York and each and every piece and parcel thereof upon the assessment rolls of said city as instances in which such inequality exists, and the extent thereof, and will give testimony of such inequality upon the hearing of this proceeding.

That the State Board of Tax Commissioners erred in fixing and determining the value of all the special franchises of the complainant at one aggregate sum and in treating all of said special franchises as one single franchise, instead of fixing and determining the value of each separate franchise separately, and that for this reason the said assessment is illegal.

Your petition- further shows that fifteen days have not elapsed since the final completion and filing of the assessment roll in said city of New York.

Wherefore, your petitioner prays that a writ of certiorari may be allowed and issue out of this court, directed to the said State Board of Tax Commissioners, commanding them to certify to this court:

1. All and singular the proceedings herein referred to and had by the said State Board of Tax Commissioners relating to said valuation and assessment, with the dates thereof respectively, together with that part of the record relating to the same.

9 2. All and singular the papers submitted by your petitioner and filed with said State Board of Tax Commissioners.

3. Any other evidence or information, if any, before said State board or considered by it in arriving at the decision aforesaid, and if there was no such evidence or information a statement to that effect.

4. A statement of the reasons for arriving at the valuation and assessment as aforesaid, and of the method adopted by said State Board of Tax Commissioners in arriving at the same, and a state-

ment showing under what law, or by virtue of what power or authority, or claim to authority, upon what evidence and what method, basis or theory said valuation and assessment was made.

5. Any and all documents, records and papers, if any such there be, not embraced in the above specifications relating to and concerning the valuation and assessment aforesaid, and a statement of any other matters material to the determination of the application of said petitioner, to the end that the said determination and proceedings of the said State Board of Tax Commissioners in the premises may be reviewed and corrected as shall be in accordance with the law and facts in this matter, and, further, that your petitioner may have herein such other and further relief as to this court may seem to be just.

Dated New York, July 3, 1900.

THE CENTRAL CROSSTOWN
RAILROAD COMPANY,
By THOS. J. REGAN, *Secretary.*

HENRY A. ROBINSON,
Attorney for the Petitioner, 621 *Broadway, New York.*

10 CITY AND COUNTY OF NEW YORK, *ss:*

Thomas J. Regan, being duly sworn, says that he is the secretary of The Central Crosstown Railroad Company, the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why such petition is not verified by the petitioner is, that the petitioner is a corporation. That deponent derives his knowledge of the facts therein set forth from the employees, agents and officers of the said petitioner and from information acquired by him in the performance of his duties.

THOS. J. REGAN.

Sworn to before me this 3d day of July, 1900.

WILLIAM SEELIG,
Notary Public, New York County.

11 Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE Central Crosstown Railroad Company
against
THE STATE BOARD OF TAX COMMISSIONERS OF THE STATE of New York. } Order.

Upon reading the petition of the Central Crosstown Railroad Company, duly verified on the 3d day of July, 1900, and it appear-

ing therefrom that there are proper grounds for the granting of a writ of certiorari as therein prayed for, addressed to the State Board of Tax Commissioners, upon motion of Henry A. Robinson, attorney for said petitioner, it is

Ordered, that the prayer of said petitioner be granted, and that a writ of certiorari issue out of and under the seal of this court to the State Board of Tax Commissioners of the State of New York, commanding said board to certify and return to this court, at a special term thereof, to be held at the court house in the city of Albany, State of New York, on the second Saturday (13th) of October, 1900, at the opening of the court on that day:

1. All and singular the proceedings herein referred to and had by the said State Board of Tax Commissioners relating to said valuation and assessment, with the dates thereof respectively, together with that part of the record relating to the same.

12 2. All and singular the papers submitted by your petitioner and filed with said State Board of Tax Commissioners.

3. Any other evidence or information, if any, before said State board or considered by it in arriving at the decision aforesaid, and if there was no such evidence or information, a statement to that effect.

4. A statement of the reasons for arriving at the valuation and assessment as aforesaid, and of the method adopted by said State Board of Tax Commissioners in arriving at the same, and a statement showing under what law, or by virtue of what power or authority or claim to authority, upon what evidence and by that method, basis or theory said valuation and assessment was made.

5. Any and all documents, records and papers, if any such there be, not embraced in the above specifications relating to and concerning the valuation and assessment aforesaid, and a statement of any other matters material to the determination of the application of said petitioner, to the end that the said determination and proceedings of the said State Board of Tax Commissioners in the premises may be reviewed and corrected as shall be in accordance with the law and facts in this matter; and, further, that the petitioner may have herein such other and further relief as to the court may seem to be just.

That a copy of said return be served upon Henry A. Robinson, Esq., the petitioner's attorney, at his office, No. 621 Broadway, in the city of New York, on or before September 1st, 1900.

I hereby dispense with the giving of any notice of the application for a writ of certiorari in this matter.

Dated July 5th, 1900.

D. CADY HERRICK,
Justice Supreme Court.

13 *Certiorari.*

The People of the State of New York to the State Board of Tax Commissioners of the State of New York, Greeting:

Whereas, we have been informed by the petition of the Central Crosstown Railroad Company that it is a corporation duly created and existing by and under the laws of the State of New York, and is located and has its principal office in the city of New York. That the State Board of Tax Commissioners heretofore fixed and determined the valuation of the special franchise of the said petitioner in and for the city of New York, for the year 1900, at the sum of five hundred and eighty-five thousand six hundred and ninety-three ($585,693) dollars, and that said valuation and assessment has been certified by your board to the department of taxes and assessment- of the city of New York, and that such valuation has been entered by the said board of taxes and assessments of the city of New York in the assessment rolls for said city, and has become a part thereof, and that fifteen days have not elapsed since the final revision and certification of said assessment rolls by said department of taxes and assessments in said city.

And we being willing for certain causes to be certified of the proceedings, decisions and actions had by and before your said board in the said matter of the valuation and assessment of said special franchise of the petitioner in the city of New York, as aforesaid;

Do hereby command you that you certify and return to the special term of our supreme court of the State of New York, at the county court house in the city of Albany, State of New York,
14 on the second Saturday (13th) of October, 1900, at the opening of the court on that day, together with this writ, the following matters and facts:

1. All and singular the proceedings herein referred to and had by the said State Board of Tax Commissioners relating to said valuation and assessment, with the dates thereof respectively, together with that part of the record relating to the same.

2. All and singular the papers submitted by your petitioner and filed with said State Board of Tax Commissioners.

3. Any other evidence or information, if any, before said State board or considered by it in arriving at the decision aforesaid, and if there was no such evidence or information, a statement to that effect.

4. A statement of the reasons for arriving at the valuation and assessment as aforesaid, and of the method adopted by said State Board of Tax Commissioners in arriving at the same, and a statement showing under what law, or by virtue of what power or authority or claim to authority, upon what evidence and by what method, basis or theory said valuation and assessment was made.

5. Any and all documents, records and papers, if any such there

be, not embraced in the above specification relating to and concerning the valuation and assessment aforesaid, and a statement of any other matters material to the determination of the application of said petitioner, to the end that the said determination and proceedings of the said State Board of Tax Commissioners in the premises may be reviewed and corrected as shall be in accordance with the law and facts in this matter, and, further, that the petitioner
15 may have herein such other and further relief as to the court may seem to be just.

To the end that the proceedings, decisions and actions had by said State Board of Tax Commissioners in the matter of the valuation and assessment of said special franchise of said petitioner may be reviewed and corrected on the merits by our said court, and that we may further cause to be done thereupon what of right shall be fit to be done.

That a copy of said return be served upon Henry A. Robinson, Esq., the relator's attorney, at his office, No. 621 Broadway, in the city of New York, on or before September 1st, 1900.

Witness the Honorable D. Cady Herrick, one of the justices of said supreme court in and for the third judicial department, at the county court house, in the city of Albany, N. Y., on the 5th day of July, 1900.

By the court.

[L. S.] P. E. McCABE, *Clerk.*

Allowed.

D. CADY HERRICK,
Justice Supreme Court.

HENRY A. ROBINSON,
Attorney for Relator, 621 Broadway, New York.

16 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The Crosstown Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Return.

To the supreme court of the State of New York:

George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, constituting the State board of tax commissioners of the State of New York, respectfully return to the writ of certiorari issued out of this court on the 5th day of July, 1900, as follows:

I.

This return, except in so far as it is otherwise stated, or where the matters herein returned are matters of record, or statements of fact as such, is made upon information and belief.

II.

All of the proceedings required by statute for the purpose of making and certifying the valuation aforesaid were had before said board, and done and performed in compliance with the statute in such case made and provided, namely, the provisions of chapter 712 of the Laws of 1899, and the amendment thereto.

III.

The State Board of Tax Commissioners was and is authorized by law to make the valuation and assessment complained of, and in the manner and form as made by it, and the statute under which
17 the said valuations were made is in accordance with the constitution and valid and binding upon the relator, and all the acts done and performed by said State Board of Tax Commissioners, as set forth in the petition herein, were in accordance with law and valid under the constitution and laws of the State of New York and of the United States.

IV.

Your respondents further return that heretofore and on the 30th day of October, 1899, the relator filed with the board a report for the year ending June 30th, 1899, verified by Pierre Jay, its president, and on January 3d, 1900, said relator filed with said board a supplemental report, verified January 2d, 1900, by said Pierre Jay. All of which said reports, papers and documents, together with the complaint filed by the relator at the time of the hearing hereinafter referred to and the request, complaint and affidavit attached to and forming a part of the return heretofore made in the Metropolitan Street Railway Company proceeding, which is hereby made a part of this return as if set out at length, were before said board at the time of fixing the valuation of the special franchise of the relator. Copies of said reports and complaint of this relator, filed as aforesaid, are hereto annexed and made a part of this return and marked Exhibits "A," "B" and "C."

V.

A notice in writing was duly given to the relator that the said State Board of Tax Commissioners would meet at its office in the city of Albany on the 10th day of April, 1900, to hear and de-
18 termine any complaint concerning said assessment. At the time fixed in said notice or to which the matter was adjourned the relator appeared and filed certain papers and was heard by counsel. Copies of said papers being hereto attached as aforesaid.

VI.

That the petitioner is in nowise aggrieved by the action of the State Board of Tax Commissioners in the premises and that the sum fixed by it as the valuation of its special franchise in the borough of

Manhattan, city of New York, is neither erroneous nor illegal, nor is the same an over-valuation of such special franchise in said borough.

That the rights, permission and franchises set out in the petition of the relator constitutes a special franchise as the same is defined by the tax law, upon which the relator is subject to a special franchise tax, and do not constitute separate and distinct special franchises so that the valuation is required to be fixed separate and apart from each other.

VII.

That your respondents have not knowledge or information sufficient to form a belief as to the exact percentage of the assessment by the local authorities of the said borough of Manhattan, city of New York, of other real property in said borough for the year 1900, and that your respondents have decided the sum of $585,693 to be the full and true value of the special franchises of the relator in the said borough and valued the same for assessment at that sum.

VIII.

Your respondents further allege and return that at and previous to the time of making such assessment, they had before them
19 certain facts and information other than those communicated to them on behalf of the relator. That at and previous to the time when the assessment and valuation of the special franchise of the relator was made by your respondents, they had made inquiry, examination and investigation as to the value of the special franchises of the relator in said borough of Manhattan, city of New York. That such inquiry, examination and investigation was made by and on behalf of this board through its agents and employees, who had obtained knowledge and information and formed opinion as to the value of the special franchise of the relator assessed and in connection therewith of the value of the property of the relator, real and personal, in said borough, it being impracticable, by reason of the large number of special franchises assessed by your respondents for them to make personal examination of the property of this relator; and from such inquiry, examination and investigation, together with the papers and documents produced before it, it decided the value of the special franchise of the relator to be the full sum of $585,693 and it fixed the value of such special franchise for the purpose of assessment at the said sum of $585,693 which your respondents believe to be a just and true valuation and which they decided to be the sum at which the said special franchise of the relator was properly assessable for the year 1900, after hearing the relator and after consideration of the matters presented by it as grounds for reduction.

IX.

That your respondents allege and return that the petitioner was allowed in all respects the hearing provided for and contemplated by

section 44 of article 2 of the tax law and alleges that the said
20 relator had a full and fair hearing by its counsel orally and submitted and presented to the board all documents and papers desired to be submitted by it.

X.

That the facts pertinent and material to show the value of the property assessed on the roll which were considered by your respondents and the grounds for the valuation of such special franchise by them, included the value of the real estate of such corporation situate in the streets, highways and public places in said borough of Manhattan, city of New York, aside from and irrespective of the use and right to use such streets, highways and public places, together with the value of the use and the right to use said streets, highways and public places of said borough by the relator, as such value has been fixed and determined upon the evidence, papers and documents before said board; which papers and documents give among other things the cost of the property, the income therefrom and other facts going to show the value thereof; and from examination, investigation and inquiry made by and on behalf of the said board as to the value of said property. That in so assessing such special franchises and in arriving at the valuation thereof, your respondents have not included in such assessment and valuation any property except such as is situate in, above, upon, or running through the public streets and public places of said borough, including the franchises, rights, authority or permission to construct, operate and maintain its foundations, roadbed, substructures and superstructures, with their appliances in, above, upon, or through said streets and public places; nor have they included the value of the right to be or the franchise to be a corporation; nor have they included the value of the good will of the business carried on by
21 it; nor have they included the value of any property other than that defined as a special franchise by subdivision 3 of section 2 of the tax law. That such assessment as made of such special franchise includes the value of the tangible and intangible property in said streets, and has been arrived at upon consideration of all the facts and circumstances affecting the value of said property, including the use or right to use said streets and public places, which your respondents have been able to ascertain.

XI.

Your respondents further return that they do not admit any of the allegations in the petition except so far as the same are shown to be true by this return and the papers thereto annexed and referred to and forming a part thereof.

In witness whereof, the undersigned, chairman of the State Board of Tax Commissioners, has hereunto set his hand this sixth day of April, 1901.

GEO. E. PRIEST, *Chairman.*

STATE OF NEW YORK, } ss:
County of Tompkins, }

George E. Priest, being duly sworn, deposes and says: "That he is chairman of the State Board of Tax Commissioners; that he has read the foregoing return and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein alleged to be stated on information and belief and as to those matters he believes it to be true.

GEO. E. PRIEST.

Subscribed and sworn to before me this sixth day of April, 1901.

W. W. VAN SLYKE,
Notary Public.

22 "EXHIBIT A."

Report of the Central Crosstown Railroad Company to the State Board of Tax Commissioners of the State of New York for the Year Ending June 30, 1899.

Office of the State Board of Tax Commissioners.

ALBANY, *October 1st*, 1899.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899, a copy of which is enclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from Law Relating to Taxation of Special Franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above
23 and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures,

substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority, or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

24 SCHEDULE A.

Title of company—Central Crosstown Railroad Company.
General offices 170 Christopher street, New York city.
Date of close of fiscal year, June 30th.
For information concerning this report address Pierre Jay, president.

Officers of the company with address:

President—Pierre Jay, 170 Christopher street, New York city.
Vice-president—J. Sanford Barnes, Jr.
Secretary—Thomas J. Regan.
Treasurer—Thomas J. Regan.
General foreman—C. H. Schwarz.

SCHEDULE B.

Description of special franchise showing streets, highways or public places possessed or rights enjoyed and in what village, tax district or districts same is located and statement of maps accompanying this report.

Central Crosstown railroad located in borough of Manhattan, city of New York—see printed franchise data, and copy of map attached.

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

25 SCHEDULE C.

Copy of special law, grant, ordinance or contract, or reference to general law under which "special franchise is held, possessed, or enjoyed, and statement of any condition, obligation, or burden imposed upon such special franchise or under which the same is enjoyed."

Central Crosstown Railroad Company.

Franchise contained in Laws of 1873, chapter 160.

This company pays into the treasury of the city of New York three per cent. per annum of the gross receipts from the operation of the railroad.

SCHEDULE D.

Statement of Assets and Liabilities June 30, 1899.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements	$761,264 13	Capital stock.....	$600,000 00
Cost of equipment.....	78,753 87	Funded debt.....	250,000 00
Stock and bonds of other companies.....	1,000 00	Accounts and bills payable	20,615 51
Material and supplies.....	2,856 30	Interest on funded debt due and accrued..	2,500 00
Accounts and bills receivable.....	34,797 75	Rentals due and accrued.....	12,536 60
Cash on hand	8,512 76	Dividends unpaid.....	
Profit and loss.....		Profit and loss.....	1,514 70
Total	$887,166 81	Total	$887,166 81

SCHEDULE E.

Capital Stock.

	Number shares.	Total par value.	Dividend declared during year.		Market value during year.		
			Rate.	Amount.	Highest.	Lowest.	Present.
Common issued	6,000	$600,000.00	10%	$60,000	255	255	255
Preferred issued							
Total							

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
250 1st mtge. bonds	Nov. 1, 1882	Nov. 1, 1922	$250,000	6%	May 1 & Nov. 1	119	117	118

28 SCHEDULE G.

Statement of Receipts and Disbursements for Year Ending June 30, 1899.

Receipts.	Amount.
From actual operation	$603,308.12
Interest and dividends	86.84
Rentals	1,353.00
Other sources	3,300.00
Sales of stocks and bonds	
Temporary loans	
Deficit	
Total	$608,047.96

Disbursements.	Amount.
Salaries of general officers and clerks	$8,983.89
Law expenses	3,000.00
Other general expenses	370,701.95
Maintenance and reconstruction or new construction paid from earnings	41,214.63
Maintenance, reconstruction or new construction paid from other sources	
Rentals	67,590.00
Interest paid	15,000.00
Taxes on capital stock and earnings	25,418.60
Taxes on property in this State	5,664.58
Taxes on property in other States	
Dividends paid 10 % common stock	60,000.00
Dividends paid — % preferred stock	
Deficit up to June 30, 1898	8,959.61
Surplus	1,514.70
	$608,047.96

SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
Christopher and Tenth Street R. R. Co.	$67,590	$7,468.16	$52,000
Total amount of annual rent			

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.	

SCHEDULE K.

Statement of Cost, Value on Basis of Reproduction.

*Name of tax district wherein located. (Give village, if one, and county.)	Cost of tangible real property included in "special franchise."	Value of tangible real property included in "special franchise" on basis of cost of reproduction.	Cost of real property not included in "special franchise."
Manhattan borough, city of New York	Don't know.	$80,000	Don't know.
Total			

* Name of each tax district in which assessments are made for real estate.

Central Crosstown Railroad Company.

This road was constructed prior to 1875, as I am advised.

I have no means of ascertaining its original cost. I assume that such cost is represented by so much of its stock and bonds now outstanding as were not expended for personal property which has been destroyed by use upon the road.

And Assessment of Real Estate in Each Tax District.

Value of real property not included in "special franchise" on basis of cost of reproduction.	Last assessment of real property included in "special franchise." *	Last assessment of real property not in connection with "special franchise." *	Give total number of miles of tracks and sidings—or wires, cables or other conductors—or of main pipes and number of service pipes—as the case may be, in, upon, under or over streets and highways in each tax district.
$120,000	$35,000	$85,000	Owns 3.99 miles of single track—operated by horse.

* Give facts in this column when such property has been separately assessed.

32 SCHEDULE L.

Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Non-taxable Securities Owned.

Description.	Amount.
Long Island Land Fertilizing Company	$1,000 00
Total	
Value of tangible personal property	$78,753 87
Total assessment of personal property	50,000 00

33

SCHEDULE M.

Details of Roads Owned and Leased.

Name of road.	From	To	Miles owned.	Miles leased.
Central Crosstown Railroad Co	Christopher St. Fy., N. river	23d St. ferry, E. river	3.86	Horse.
	Christopher St. & West St	Greenwich & 11th St	.13	"
Christopher & Tenth St. railroad	Christopher St. Fy., N. river	East 10th St. ferry	Horse.	3.81
		Total mileage	3.99	3.81

This schedule is applicable only to railroad corporations.

34 SCHEDULE N.

Show changes, if any, between June 30, 1899, and October 1, 1899, in real estate or otherwise, affecting the purpose of this report.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same.

STATE OF NEW YORK, }
County of New York, } ss.:

Pierre Jay, president of the Central Crosstown Railroad Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1899, as well as of its financial condition and affairs on the said date, and a like true, full and correct statement of the real property of said company on the first day of October, 1899, to the best of my knowledge and belief.

[L. S.] PIERRE JAY.

Subscribed and sworn to before me this 27th day of October, 1899.

S. A. EMANUEL,
Notary Public, New York County, N. Y.

35 "EXHIBIT B."

Form 5.

Tax district —.

Surface
Street railroads.
Animal power.
Cable conduit.
Conduit electric.
Electric overhead.
Surface steam.
Other powers.

Supplemental Report of the Central Crosstown Railroad Company of Tangible Real Property Located in, upon, under, or above Streets, Highways, and Public Places.

To metro. system:

Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank, and return to this office on or before —— —.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Form 5. *Overhead System.*

	Single track.			Double track.			
	Miles.	Age.	Miles constructed since last tax assessment.	Miles.	Age.	Miles constructed since last tax assessment.	
Bracket cons							
Wooden poles							
Bracket cons							
Iron poles							
Span wire cons							
Wooden poles							
Span wire cons							
Iron poles							
Total cost of property described above erected complete							$
Total present value based on cost of production							$

Conductors.

Conductors not in subways (exclusive of trolley wire).			Insulated conductors in subways.			Third rail system conductor rail.		
Miles.	Size.	Age.	Miles.	Size.	Age.	Weight per yard.	Section.	Age.

Total cost of property described above erected complete—cannot give—have no means of ascertaining	$
Total present value based on cost of reproduction	$27,676

38

Surface Street Railroads.

Form 5.

Track.

Motive power. *	Miles measured as single track.	Rails.			Kind of paving. †	Miles laid since last tax assessment.	
		Weight per yard.	Section Girder, tee, or tram.	When laid.			
Horse	3.86	47 lbs.	Tram	Before 1894	Stone and asphalt		
"	.13	"	"	"			
Total original cost of property described above laid complete—cannot give—have no means of ascertaining							
Total present value based on cost of reproduction							$52,980.00

* When motive power is electricity, state whether conduit electric or overhead electric, and, if both systems are operated, report each system separately.
† If not paved, state kind of ballast and number of cubic yards per mile.

Miles of subway. *	Number of ducts. *	Type of duct.	Kind of paving.	Number of manholes.	Built since last tax assessment.		
					Miles of subway.	Number of manholes.	
Total original cost of property described above built complete—cannot give—have no means of ascertaining.....							$
Total present value based on cost of reproduction							$

*Give separately miles of subways containing respectively 1, 2, 3, 4 and more ducts.

40 STATE OF NEW YORK, } ss.:
County of New York, }

Pierre Jay, president of the Central Crosstown R. R. Co., being duly sworn, deposes and says, that the foregoing statements have been compiled from the books and records of this company, and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

PIERRE JAY.

Subscribed and sworn to before me this 29th day of December, 1899.

F. J. MARINELLI,
Notary Public.

41 "EXHIBIT C."

To the State Board of Tax Commissioners:

The Central Crosstown Railroad Company of New York hereby complains of the assessment made by the State Board of Tax Commissioners upon the franchise, rights and permission owned by it to construct, maintain and operate a railroad or railroads on the surface of streets in the borough of Manhattan, in the city of New York, and specifies the following respects in which the assessment complained of is incorrect:

First. The said assessment is illegal for the reason that the State Board of Tax Commissioners have no authority in law to assess or to fix and determine the valuation for the purposes of taxation of the franchise, rights or permissions to operate a railroad upon the surface of the streets in the city of New York, in that the statute, viz.: chapter 712 of the Laws of 1899, which your petitioner is advised the State Board of Tax Commissioners claim confers upon it the power and authority to make such assessment and to fix and determine the valuation of such franchise, rights and permissions, is in violation of the constitution of the State of New York, and is void.

Second. That the said assessment made by the State Board of Tax Commissioners upon the franchise, rights and permission owned by your petitioner to construct, maintain and operate railroads upon the surface of streets in the city of New York is illegal and void for the reason that the statute of the State, viz.: chapter 712 of the Laws of 1899, which the said Board of Tax Commissioners claim confers upon it the right, power and authority to act in the prem-

42 ises, and to fix and determine the valuation of such franchise, rights and permission, prescribes no rule for valuation of such franchise, rights and permission, and is for that reason illegal and void.

Third. That the valuation of the franchise, rights and permis-

sions as aforesaid, owned by the Central Crosstown Railroad Company of New York, as fixed and determined by said Board of Tax Commissioners at the sum of one million one hundred and ninety-seven thousand and twenty ($1,197,020) dollars is grossly excessive, and is an over-valuation, and for that reason said assessment fixed and determined by said board is erroneous. That the extent of such over-valuation is ($1,000,000) one million of dollars.

Fourth. That the said assessment and the valuation of the franchise, rights and permissions owned by the Central Crosstown Railroad Company of New York, fixed and determined by said board, is unequal in that it has been made at a higher proportion of valuation than that of other special franchises of the same character within the city of New York, to wit: at a higher proportionate valuation than the franchise, rights and permissions to construct, maintain and operate railroads on the surface of the streets owned by other railroad corporations in the city of New York.

Fifth. That the said assessment and valuation of the franchise, rights and permissions as aforesaid, owned by the Central Crosstown Railroad Company of New York, as fixed and determined by said board, is unequal in that it has been made at a higher proportionate valuation than the assessment of other special fran-
43 chises of the same character in the State of New York, to wit: at a higher proportionate valuation than the assessment of the franchise, rights and permissions to construct, maintain and operate railroads on the surface of streets owned by other railroad corporations in the State of New York.

Sixth. That the said assessment and said valuation of the franchise, rights and permission owned by the Central Crosstown Railroad Company of New York, as aforesaid, as fixed and determined by the State Board of Tax Commissioners, is unequal in that it is made at a higher proportionate valuation than the assessment of all other real estate in the city of New York.

Seventh. That the said Board of Tax Commissioners have refused to inform the said corporation — the value of the tangible property of said corporation situated in, upon, under or above the streets upon which the said corporation owns the right and franchise to construct, maintain and operate a railroad, fixed and determined by the said commissioners and included in said assessment, and also *has* refused to inform the said corporation of the value of the franchise, rights and permissions owned and possessed by said corporation to construct, maintain and operate a railroad upon said streets, as fixed and determined by said commissioners.

Eighth. That said corporation has not been given such a hearing before the commissioners as it is entitled to under the laws and constitution of the State.

That the State Board of Tax Commissioners erred in fixing and determining the value of all the special franchises of the complain-
ant at one aggregate sum and in treating all of said special
44 franchises as one single franchise, instead of fixing and determining the value of each separate franchise separately, and that for this reason the said assessment is illegal.

That said corporation refers to and makes a part of this complaint, all the reports, statements, affidavits and information of every kind furnished by it to the commissioners, and now on file with the said board.

Dated New York, April 9th, 1900.

THE CENTRAL CROSSTOWN RAILROAD COMPANY OF NEW YORK,
By PIERRE JAY, *President.*

STATE OF NEW YORK, }
County of New York, } ss.:

Pierre Jay, being duly sworn, deposes and says: That he is the president of the Central Crosstown Railroad Company of New York; that the foregoing statement, specifying the respects in which the assessment upon the Central Crosstown Railroad Company of New York is incorrect, is true.

PIERRE JAY.

Sworn to before me this 9th day of April, 1900.
F. J. MARINELLI,
Notary Public, New York County.

45 (The following are papers filed under Schedule "C" hereinabove, page 25.)

The Central Crosstown Railroad Company. Franchise grant ordinance, with financial conditions or obligations imposed.

Laws of 1873, chap. 160.

An act to authorize the transportation of passengers in the city of New York by means of street railways, to be constructed through certain streets and avenues therein.

Passed March 28, 1873.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. John Sullivan, William Thompson, John L. Macaulay, Emmett D. Burr, Henry W. Prosser, Anton Stone, Albert H. Combs, Augustus F Brainard, Benjamin F. Judson, Edward O. Gould, Thomas S. Ball, Richard C. Tilford, Edward C. Taylor, John T. Mackenzie, Fred. S. Gibbs, George C. Annis, J. M. Noyes, William J. Trimble, James Adams, Dayton S. Morgan, James Moran, James Bain, William Colligan, Byron Ward, Eugene B. Gere, George H. Allen, Stillman A. Clark, Alexander W. Shepherd, Richard B. Hill, Allen D. Tracy, Henry J. Brewer, Theodore Rodgers, Martin V. Forman, Daniel Stratton, Harry Walter E. C. Johnson, Edson J.

Wilson, Charles D. Culver, Sidney B. Roby, William White, William M. Shipman, Harmon D. Hull, Thomas Kivlin, Joseph Messinger, William H. Hutchinson, Robert W. Murray, Edward Sellick and their assigns, are hereby authorized and empowered to lay, construct, operate, maintain and use railways, with a double or single track, in the city of New York, and to convey passengers
46 thereon for compensation, through, upon and along the following routes of said city, to wit: Commencing at the foot of Twenty-third street, East river; thence through and along Twenty-third street to Avenue A, with double tracks; thence through and along Avenue A, with double tracks, to Seventeenth street; thence through and along Seventeenth street, with a single track, to Broadway and Union square; thence through and along Broadway and Union square, with double tracks, to Fourteenth street; thence through and along Fourteenth street, with double tracks, to Seventh avenue; thence through and along Seventh avenue, with double tracks, to Hammond or West Eleventh street; thence through and along Hammond or West Eleventh street, with double tracks, to West street; thence through and along West street, with double tracks, to Christopher street, at the foot of Christopher street, North river. Returning—from the foot of Christopher street, North river; thence through and along Christopher street, with a single track, to Greenwich street; thence through and along Greenwich street, with a single track, to Hammond or West Eleventh street; thence through and along Hammond or West Eleventh street, with double tracks, to Seventh avenue; thence through and along Seventh avenue, with double tracks, to Fourteenth street, thence through and along Fourteenth street, with double tracks, to Broadway and Union square; thence through and along Broadway and Union square to Eighteenth street; thence through and along Eighteenth street, with a single track, to Avenue A; thence through and along Avenue A, with double tracks, to Twenty-third street; thence through and along Twenty-third street, with double tracks, to the East river, at the foot of Twenty-third street, together with the necessary connections, turn-outs, switches and convenient stands for the
47 proper working and accommodation of said railway on the said route.

Section 2. Said railways shall be constructed on the most approved plan for the construction of city railways, and with the rail now used upon the street railroads in Philadelphia, commonly called the Philadelphia rail; and cars shall be run as often as the convenience of the public may require, and shall be subject to such reasonable rules and regulations in respect thereto as the common council of the city of New York from time to time prescribe, and to the payment to the city of such license fee annually for each car run thereon as shall be prescribed by the common council thereof, but not exceeding the amount authorized by any ordinance heretofore passed; and the said persons and their assigns are hereby authorized to charge and collect five cents for each passenger conveyed upon said railways. Whenever the track or tracks of said railway shall cross

or intersect the track or tracks of any railroad, by mutual agreement, between the owners of said respective railways, transfer tickets may be issued to passengers at an additional rate of fair not exceeding two cents, said transfer tickets to be received in full for fare to any point on the line of said railroads, or either of them.

SECTION 3. In the construction, operation or use of such railways upon the route or routes herein designated, the said persons or their assigns shall use any portion of any other railroad tracks now laid upon any of the streets or avenues, above named, except West street, where a double track shall be constructed, and they are hereby authorized to run upon, along and over, and intersect and use the same; and in case they cannot agree with the owner or owners
48 thereof respecting the compensation or payment to be made therefor, then the amount of such compensation or payment shall be ascertained and determined in the manner provided by subdivision six of the twenty-eighth section of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty.

And should any real estate or interest therein be required for the purpose of constructing said railways on said route or routes, as herein specified and authorized, for which the said persons above named, or their assigns, shall be unable to agree with the owner or owners for the use or purchase thereof, they may acquire the right to use or title to the same in the manner specified in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first sections of said act of April second, eighteen hundred and fifty, as the same is amended by subsequent acts; except that, in any of the proceedings for any of the purposes authorized by this section, it shall not be necessary that the petition to the supreme court shall make any allegation of or reference to any incorporation, capital stock, surveys or maps, or of the filing of any certificate of location; and during the pendency of such proceedings, the said persons or their assigns shall be permitted to enter upon, connect with and use portions of other tracks already laid in any of the streets or avenues named herein as may be necessary to perfect and carry into effect the provisions of this law, upon their giving good and sufficient security, to be approved by one of the justices of the supreme court, for the payment of the amount of the award, which may be made by arbitration or by order of the supreme court; and all actions or proceedings in law relating to, affecting or aris-
49 ing under this act, or the authority hereby given, shall be commenced in the supreme court of the first judicial district and shall have preference over all cases on the calendar of the court not now perferred by statute; but in all cases the use of said streets or avenues for the purposes of said railways, as herein authorized, shall be considered one of the uses for which the mayor, aldermen and commonalty of said city of New York hold said streets and avenues.

SECTION 4. A majority of the first fifteen persons or grantees named in the foregoing first section of this act shall, as soon as practicable after its passage, by a notice in writing signed by them,

convene a meeting of the persons or grantees named in said first section, or their assigns, at a time and place in the city of New York, to be designated in said notice. A copy of said notice shall be served upon each of the other grantees or their assigns, either in person, or by depositing the same in the post office addressed to him at the post office nearest his last known place of residence or business, at least twenty days before the day therein specified for such meeting.

SECTION 5. And for the rights and privileges herein granted the said persons or their assigns shall annually on the first day of December of each year, pay into the treasury of the city of New York three per centum of the gross receipts from the operation of the railroad, the amount of which gross receipts shall be determined by the sworn statement of the president and treasurer of said railroad, but subject to the inspection of their books by the comptroller of the city.

SECTION 6. The legislature may at any time alter, amend or repeal this act.

SECTION 7. This act shall take effect immediately.

At a special term of the supreme court of the State of New York held in and for the county of Albany, at the court house in the city of Albany, on the 16th day of April, 1901.

Present: Hon. D. Cady Herrick, justice.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Central Crosstown Railroad Company
against
THE STATE BOARD OF TAX COMMISSIONERS (and One Other Relator against These Same Defendants).
} Order of Reference.

A writ of certiorari having heretofore been duly allowed in each of the above-entitled proceedings, pursuant to the provisions of article XI. of the tax law as amended by chapter 712 of the Laws of 1899, upon the verified petitions of the abovenamed relators to review the action of the said Board of Tax Commissioners in assessing the several special franchises of the said relators; proof of due service on the said commissioners of the said writs, together with copies of the petitions on which they were granted and of the orders directing the said writs to issue having been made; the said Board of Tax Commissioners having made a return to said writs; further proceedings herein having been from time to time adjourned by stipulation between the attorneys for the respective parties;

51 no hearing having been had upon the said returns; the said relators, by their attorney, Mr. Henry A. Robinson, and Mr. Chas. F. Brown, of counsel, having made application to this

court for an order appointing a referee to take such evidence herein as the court may direct and to report the same to this court with his findings of fact and conclusions of law; the attorney-general of the State of New York, on behalf of the said State Board of Tax Commissioners having appeared and consented to such reference and to the granting and entry of an order of reference;

Now on the said petition, order, writ and return and on all the proceedings heretofore had herein, on motion of the said attorneys for the relators and the attorney-general appearing and making no objection thereto;

It is ordered that it be and it hereby is referred to Hon. Robert Earl, residing at Herkimer, county of Herkimer, in the State of New York, to take and report to this court, with all convenient speed, such evidence upon the several issues of fact raised by the said petition, writ and return as may be adduced before him by either of the parties hereto, with his findings of fact and conclusions of law.

It is further ordered that the hearings under this order be had at such times and places as the said referee may direct; that the said referee shall have power to adjourn said hearing from time to time as justice may require and to compel the attendance of witnesses and the production of papers.

D. CADY HERRICK,
Jus. Sup. Ct.

52 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* Central Crosstown Railroad Company
against
THE STATE BOARD OF TAX COMMISSIONERS. } Proceeding No. 15.

The proceedings in the above-entitled matters were had at capitol, Albany, New York, on Friday, January 17, 1902, before Hon. Robert Earl, referee, as follows:

Appearances.

For plaintiffs: George S. Bixby.
For defendants: Dep. atty.-gen. Henry B. Coman, J. Newton Fiero.

It is stipulated that the referee's oath be and hereby is waived.

PIERRE JAY, called for the plaintiff, testified as follows:

Direct examination:

Q. Are you connected with the Central Crosstown Company?
A. I am its president and have been for several years last past.

Q. Was this company on January 8, 1900, or has it ever
53-187 been, controlled by the Metropolitan Street Railway Company?

A. No; the respective boards of directors contain different persons. The company had and has its own independent organization.

Q. Was there or is there any operating contract between the companies?

A. No; only a verbal arrangement.

Q. Was there or is there any arrangement for transfer?

A. Only a verbal arrangement, terminable on notice.

Q. What are the terms of this arrangement?

A. Nothing, except that the interchange of passengers is to take place until further notice.

Cross-examination:

Q. Is the Metropolitan Street Railway Company a stockholder of the Central Crosstown Railroad Company?

A. Yes.

Q. How much stock did it hold on January 8, 1900?

A. I am informed that it owned 4,615 shares.

Q. What is the issued stock of the company?

A. The company has issued 6,000 shares. It had the same amount issued on January 8, 1900.

It is *stipulated* that the minutes of the testimony taken in the proceeding of the *People of the State of New York ex rel. Metropolitan Street Railway Company* against *State Board of Tax Commissioners* before the referee herein, shall constitute testimony in this proceeding subject to objection and exception as therein stated, and so far as applicable to the issues raised in the proceeding of the Central Crosstown Railroad Company.

The testimony in the proceeding of the Metropolitan Street Railway Company was then read in evidence, consisting of printed pages, marked No. 188 to 628 inclusive.

188 PETER DEYO, sworn for the plaintiff, testified:

Examined by Mr. BROWN:

Q. You reside in the city of Albany?

A. Yes, sir.

Q. You are the secretary of the Board of State Tax Commissioners?

A. Yes, sir.

Q. You were subpœnaed to produce the reports filed with the Board of State Tax Commissioners by various street railroad corporations?

A. Yes, sir.

Q. Have you the reports here?

A. I have the reports and documents here that were filed by the Metropolitan system and the Third Avenue.

Q. Will you produce the report or reports filed by the Metropolitan street railway?

A. Yes, sir. (Producing.) There they are.

Q. I mean of that corporation itself?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the report of the Metropolitan road made to the Board of State Tax Commissioners, verified October 27, 1899.

Received and marked "Metropolitan, Ex. No. 1, June 6, 1901.—J. M. R."

Mr. BROWN: I offer in evidence a supplemental report, which is marked "Received by the State Board of Tax Commissioners, Jan. 3, 1900."

Received and marked "Metropolitan, Ex. No. 2, June 6, 1901.—J. M. R."

Mr. BROWN: I offer in evidence a supplemental report marked "Received Jan. 24, 1900."

Received and marked "Metropolitan, Ex. No. 3, June 6, 1901.—J. M. R."

189 Mr. BROWN: I offer an affidavit of Charles E. Warren, and the papers annexed to that affidavit, the affidavit being dated April 13, 1900.

Received and marked "Metropolitan, Ex. No. 4, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Twenty-third Street railroad?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the report of the Twenty-third Street road, and two supplemental reports, the original report being dated October 27, 1899, and the supplemental reports marked respectively "Received Jan. 3 and Jan. 24, 1900."

Received and marked respectively "23rd Street, Ex. Nos. 5, 6 and 7, June 6, 1901.—J. M. R."

Q. Will you produce the Twenty-eighth and Twenty-ninth Street Crosstown reports?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the report dated October 27, 1899, and two supplemental reports marked respectively "Received Jan. 3 and Jan. 24, 1900."

Received and marked respectively "28th and 29th Street, Ex. Nos. 8, 9 and 10, June 6, 1901.—J. M. R."

Q. Will you produce the Fulton Street Railroad report?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report and two supplemental reports, bearing the same dates.

Received and marked respectively, "Fulton Street, Ex. Nos. 11, 12 and 13, June 6, 1901.—J. M. R."

Q. Will you produce the Christopher and Tenth Street reports?
A. Yes, sir. (Producing same.)

190 Mr. BROWN: I offer the report and one supplemental report, bearing the same dates.

Received and marked respectively "Christopher and Tenth Street, Ex. Nos. 14 and 15, June 6, 1901.—J. M. R."

Q. Will you produce the Central Crosstown Railroad report?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer the original report and one supplemental report, bearing the same dates.

Received and marked respectively "Central Crosstown, Ex. Nos. 16 and 17, June 6, 1901.—J. M. R."

Q. Will you produce the Thirty-fourth Street Crosstown Railroad report?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer the report and two supplemental reports.

Received and marked respectively "Thirty-fourth Street Crosstown, Ex. Nos. 18, 19 and 20, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Bleecker Street and Fulton Ferry Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer the report and two supplemental reports.

Received and marked respectively "Bleecker Street and Fulton Ferry, Ex. Nos. 21, 22 and 23, June 6, 1901.—J. M. R."

Q. Will you produce the report of the New York & Harlem Railroad Company?
A. There are just two supplemental reports in the New York & Harlem. That is the city line.

Mr. BROWN: I offer the reports in evidence.

Received and marked respectively "New York & Harlem, Ex. Nos. 24 and 25, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Forty-second Street and Grand Street Railroad Company?
A. Yes, sir. (Producing same.)

191 Mr. BROWN: I offer the original report and two supplemental reports, bearing same dates.

Received and marked respectively "Forty-second Street and Grand Street, Ex. Nos. 26, 27 and 28, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Central Park, North and East River Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer the original and two supplemental reports, bearing the same dates.
Received and marked respectively "Central Park, North and East River, Ex. Nos. 29, 30 and 31, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Second Avenue Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original and two supplemental reports, bearing the same dates.
Received and marked respectively "Second Avenue, Ex. Nos. 32, 33 and 34, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Ninth Avenue Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report and two supplemental reports, bearing the same dates.
Received and marked respectively "Ninth Avenue, Ex. Nos. 35, 36 and 37, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Eighth Avenue Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report and two supplemental reports.
Received and marked respectively "Eighth Avenue, Ex. Nos. 38, 39 and 40, June 6, 1901.—J. M. R."

192 Q. Will you produce the report of the Sixth Avenue Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report and two supplemental reports, bearing the same dates.
Received and marked respectively "Sixth Avenue, Ex. Nos. 41, 42 and 43, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Broadway and Seventh Avenue Railroad Company?
A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original reports and two supplemental reports, bearing the same dates.
Received and marked respectively "Broadway and Seventh Avenue, Ex. Nos. 44, 45 and 46, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Dry Dock, East Broadway & Battery Railroad Company?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report, dated October 27, 1899, and two supplemental reports, filed respectively February 21 and February 22, 1900.

Received and marked respectively "Dry Dock, East Broadway & Battery Ex., Nos. 47, 48 and 49, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Forty-second Street, Manhattanville & St. Nicholas Avenue Railway Company?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer the original report, dated October 27, 1899, and two supplemental reports, filed respectively December 30, 1899, and February 24, 1900.

Received and marked respectively "Forty-second Street, Manhattanville & St. Nicholas Avenue, Ex. Nos. 50, 51 and 52, June 6, 1901.—J. M. R."

193 Q. Will you produce the report of the Third Avenue Railroad Company?

A. Yes, sir. (Producing same.)

Mr. BROWN: I offer in evidence the original report, dated October 27, 1899, and two supplemental reports, filed respectively December 30, 1899, and February 24, 1900.

Received and marked respectively "Third Avenue, Ex. Nos. 53, 54 and 55, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Union [illegible]lway Company?

A. Yes, sir, just an original report. (Producing same.)

Mr. BROWN: I offer the report in evidence.

Received and marked "Union Railway, Ex. No. 56, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Westchester Electric Railway Company?

A. Yes, sir, just an original report. (Producing same.)

Mr. BROWN: I offer the report in evidence.

Received and marked "Westchester Electric Railway, Ex. No. 57, June 6, 1901.—J. M. R."

Q. Will you produce the report of the Southern Boulevard Railroad Company?

A. Yes, sir, just an original report. (Producing same.)

Mr. BROWN: I offer the report in evidence.

Received and marked "Southern Boulevard Ex. No. 58, June 6, 1901.—J. M. R."

(Mr. COMAN:)

Q. Does that cover all the Metropolitan and Third Avenue?

A. Yes, sir.

Q. Attached to those reports are the various charters of these railroads?

A. Yes, sir.

Q. Were they a part of the report?

A. Yes, sir.

194 CHARLES E. WARREN, sworn for the plaintiff, testified:

Examined by Mr. BROWN:

Q. What is your connection with the Metropolitan street railway?

A. Secretary and treasurer.

Q. Were you such in the fall of 1899?

A. Secretary of the company.

Q. A number of reports have been produced here made by the Metropolitan Street Railway Company and other railway companies in the Metropolitan system that appear to be verified by you?

A. Yes, sir.

Q. Were the facts stated in those reports true?

Mr. COMAN: I object to it as incompetent.

The REFEREE: Verified reports.

Mr. BROWN: Yes.

The REFEREE: We will assume they are true unless impeached.

Q. In a number of these corporations the reports show that certain sums in the way of percentages of receipts were annually required to be paid to the city, without enumerating the specific companies, are you familiar with the ones?

A. I am; yes, sir.

Q. Who makes the payments of those receipts to the city?

A. I do; I sign the check and send it down by a messenger.

Q. To what officer of the city are they made?

A. Comptroller of the city of New York.

Q. Can you state whether up to the time of making the report whether all those reports required to be made had been made to the city?

A. Yes, sir.

Q. As to the Twenty-third Street road have you any personal knowledge of the payment of the $150,000?

A. We have a certificate of the comptroller acknowledging the receipt of the money.

195 Mr. BROWN: I offer the certificate in evidence.

Mr. COMAN: I object to the evidence as immaterial, but I do not object to your putting that in evidence on the ground it is not the best evidence.

Mr. BROWN: I offer it in evidence as proof of the payment of $150,000.

The REFEREE: I suppose it is a fact about which there cannot be any dispute, anyway?

Mr. COMAN: I presume not.

Mr. BROWN: Won't you admit on the record the $150,000 was paid?

Mr. FIERO: No, we don't care to do that, because we don't regard the evidence as material.

Mr. BROWN: I put in evidence the original receipt, signed by Andrew H. Green, comptroller of the city, showing the payment of $150,000, which was the sum paid on the sale at public auction of the right to operate a road through Twenty-third street.

Received and marked "Metropolitan, Ex. No. 59, June 6, 1901—J. M. R."

It is agreed that a true copy of the receipt is in the report of the Twenty-third Street railroad, which has been put in evidence and marked Ex. Nos. 5, 6 and 7.

Q. You are familiar with the various lines of the Metropolitan system in this city?

A. I am.

Q. You are familiar with the maps the company have had made?

A. Yes.

Q. I produce a map, and ask you if that shows the various roads?

A. It does.

Q. Will you explain what the different colors mean?

A. The mechanical traction lines on this map are in blue,
196 the horse lines are in red and the horse lines controlled by the company are in dotted green.

Q. At the present time the mechanical lines are all operated by electricity?

A. Yes, sir.

Q. In the month of May, 1900, was any part of the mechanical lines operated by power other than electricity?

A. About twenty odd miles operated by cable traction.

Q. That was on what streets?

A. Broadway, Columbus and Lexington.

Q. They have since been converted to electricity?

A. Underground electric.

Q. This map, which you have examined, shows not only the lines that were owned and controlled by the Metropolitan Company in the spring of 1900, but it shows also the Third Avenue?

A. Yes, sir.

Q. The lines at that time controlled by the Third Avenue road?

A. Yes, sir.

Q. They have since the month of April and May, 1899, been acquired by the Metropolitan Company?

A. Yes, sir, Metropolitan Street Railway Company.

Q. Now, owned or controlled by the Metropolitan Company?

A. Yes, sir.

Mr. BROWN: I offer the map in evidence.

Received and marked "Metropolitan, Ex. No. 60, June 6, 1901—J. M. R."

Q. Now, I show you another map; will you state what that map shows?

A. Shows the franchise tracks of the Metropolitan Street Railway Company, what they own under franchise.

Q. What is operated by mechanical traction?

A. Mechanical and horse. Shows the franchise tracks, Chambers Street and Grand Street Ferry railroad.

Q. Shows the several franchises owned by that system?

A. Yes, sir.

Q. Of the roads that were consolidated in the Metropolitan
197 Street Railway Company?

A. Yes.

Q. Each franchise is a different color or character?

A. Yes, sir.

Mr. BROWN: I offer the map in evidence.

Received and marked "Metropolitan, Ex. No. 61, June 6, 1901—J. M. R." (Superseded by Ex. No. 63, p. 273.)

(No cross-examination.)

Adjourned to June 14 and 15, 1901, hearing to begin at 10.30 a. m.

NEW YORK, FRIDAY, *June* 14, 1901.

By consent of counsel case was adjourned to Tuesday, June 25th, 1901.

NEW YORK, TUESDAY, *June* 25, 1901.

Parties met pursuant to adjournment.

Present: Same as before, and also Attorney-General Davies, in behalf of the defendants.

The counsel for the plaintiffs produce a tabulation, made as of January 8, 1900, and giving data and valuations as of that date.

Column No. 1 thereof shows the date of each special franchise owned by each company in respect of which special franchises the tangible property in streets connected therewith has been assessed.

Column No. 2 shows the initial streets in the described route contained in such franchise.

198 Column No. 3 has been prepared at the request of the defendants and contains the cost of reproduction of the tangible property connected with each special franchise, which cost includes all items of expenses incurred in streets in order to effect or expedite the production and location of such tangible property, such as construction of sewers, removal of pipes, charges of engineers and inspectors to supervise the construction, employed by the local authorities and paid for by the company.

Column No. 4 contains a statement on behalf of the plaintiffs of

the value of the tangible property connected with each special franchise based on the cost of reproduction less depreciation, that is, the value on January 8, 1900, of the tangible property connected with each special franchise based on the cost of reproduction in the condition on that date.

It is *stipulated*, for the purposes of this proceeding only, that the actual value of the tangible properties of the several companies connected with the several special franchises owned by each on the 8th day of January, 1900, is the amount specified in column No. 3 of the following tabulations, it being understood that such valuations are acceded to by the plaintiffs without prejudice to their contentions that the values of said tangible properties did not exceed the amount specified in column No. 4 of said tabulations.

These tabulations, subject to the foregoing stipulations, are received in evidence and are as follows:

199 *Tabulations.*

Special franchises and values of tangible property in streets connected therewith owned on the second Monday of January, 1900, by twenty-four companies, as follows.

Metropolitan Street Railway Co.

1	2	3	4
Date of franchise.	Initial street.	Reproduction, etc.	Value less depreciation.
(1) Dec. 5/84. Bway. Sur. RR. Co.; Res. of C. C.	Bway, Battery to 15th St.	$1,179,416	$450,000
(2) Chap. 508, Laws 1874. S. Fy. RR. Co.	State St. & B. P. to Ch. & Barclay.	261,400	103,000
(3) Dec. 30/84. Chmbrs. & G. St. RR. Co.; Res. of C. C.	Chambers & G. St.	98,200	39,000
(4) Chap. 625, Laws 1868. Ave. C. R. Co.	Ave. C, H. St., Greenwich St.	98,000	39,000
(5) Chap. 19, Laws 1871. Ave. C. RR. Co.	West St., 10th, 17th, etc.	169,200	65,000
(6) Oct. 8/92. H. W. St. & P. F. RR.; Ch. & G. St. RR.; Res. of C. C.	Ridge. & Mont.	11,300	4,000
(7) Oct. 8/92. H. W. St. & P. F. RR.; Ch. & G. St. RR.; Res. of C. C.	Pitt. & Gouv.	10,640	3,000
(8) Oct. 8/92. H. W. St. & P. F. RR; Res. of C. C.	Lex. Ave., 27th to 36th Sts.	170,000	70,000
(9) Dec. 31/89. Met. C. T. RR. Res. of C. C.	East, Broome & W. Bway.	260,240	95,000
(10) Oct. 29/92. Met., C. T. RR.; Res. of C. C.	W. 3d St., W. Bway. to Sullivan.	12,600	4,000
(11) Oct. 8/92. Met., C. T. RR.; Res. of C. C.	S. 5th Ave., Spring to Broome.	28,000	10,000

1 Date of franchise.	2 Initial street.	3 Reproduction, etc.	4 Value less depreciation.
(12) Oct. 8/92. Met., C. T. RR ; Res. of C. C.	Broome, Sullivan & Watts.	18,000	7,000
(13) Oct. 8/92. Lex. Ave. & P. F. RR.; Res. of C. C.	Lex. Ave., 42d St. to H. R. & 116th St.	2,163,200	950,000
200			
(14) Oct. 18/92. Col. & 9th Ave. RR.; Res. of C. C.	Col. Ave., 64th to 109th, 106th St. Ams. to Col. Ave.	961,600	370,000
(15) Sept. 18/94. Col. & 9th Ave. RR. & M. S. Ry.; Res. of C. C., Col. & 9th Ave. franchise.	109th St. & Man. Ave.	33,600	6,000
(16) Apl. 14/96. M. S. Ry.; Res. of C. C.	W. Bway., Chambers & Fulton.	16,800	3,000
(17) Dec 19/93. 9th Ave. RR.; Res. of C. C.	125th St. to Ft. Lee Ferry.	75,000	7,000
(18) Sep. 18/94. M. S. Ry. & Col. & 9th Ave. RR., Met. St. Ry. franchise; Res. of C. C.	Man. Ave., 110th to 116th St.	84,000	6,000
	23d Street Railroad Co.		
(1) Chap. 823, Laws 1869.	23d Street.	$589,300	$99,840
(2) Chap. 100, Laws 1873.	2d Ave. & 28th St.	21,046	160
	28th & 29th Street Crosstown Railroad Company.		
Nov. 30/86. Res. of C. C.	14th St., 13th Ave., 34th St., E. R.	$107,150	$30,000
	Fulton Street Railroad Company.		
Dec. 30/86. Res. of C. C.	Burling Slip to Cort. Ferry.	$15,500	$6,000
	Thirty-fourth Street Crosstown Railroad Company.		
(1) Dec. 27/84, 34th St. R. R. Co.; Res. of C. C.	34th St., 10 Ave., 42d St.	$25,000	$10,000
(2) Nov. 10/85, 34th St. Ferry & 11th Ave. R. R. Co.; Res. of C. C.	34 St. & 11th Ave. to 12th Ave., 11th Ave., 34th to 42d St.		
201	Bleecker Street & Fulton Ferry Railroad Company.		
(1) Chap. 514, Laws 1860.	23d St. & 11th Ave. to Fulton Fy.	$111,556	$44,000
(2) Chap. 199, Laws 1873.		42,623	21,000
	42nd Street & Grand Street Ferry Railroad Company.		
Chap. 515, Laws 1860.	42d St. to Grand St. Fy.	$103,300	$30,000
	Central Park, North & East River Railroad Company.		
(1) Chap. 511, Laws 1860.	59th St. to South Ferry.	$758,125	$198,000
(2) Apl. 14/96; Res. of C. C.	W. Bway. 2 tracks, Fulton to Vesey.	5,719	2,000

Ninth Avenue Railroad Company.

1 Date of franchise.	2 Initial street.	3 Reproduction, etc.	4 Value less depreciation.
(1) Nov. 14/53; Res. of C. C.	Greenwich St. & Wash, 9th Ave., 53d to 64th Sts.	$202,700	$85,000
(2) Dec. 30/82; Res. of C. C.	Blvd. & Ams. Ave. to 124th St.	479,200	163,800
(3) Chap. 868, Laws 1866.	Fulton, Bway., Wash.	12,273	5,000
(4) Oct. 8/92; Res. of C. C.	53d St., Bway., 9th Ave., Canal, Wash., Greenwich.	59,900	26,000
(5) July 2/59, Res. of C. C.	Canal, Wash., Greenwich.	500	200

Eighth Avenue Railroad Company.

(1) Sep. 6/51, Res. of C. C.	W. Bway., Chmbrs., Canal, Hudson, 8th to 64th.	$1,072,630	$250,000
(2) Nov. 11/52.	W. Bway & Church, Vesey, Chambers, Canal, W. Bway. Bway.	38,460	7,000
(3) Chap. 478, Laws 1874.	8th Ave., 64th to McD. Rd., to Harlem R.	994,350	243,000

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Sixth Avenue Railroad Company.

(1) Sep. 6/51; Res. of C. C.	6th Ave., 59th St., Canal, W. Bway.	$882,890	$220,300
(2) June 23/52; Res. of C. C.	W. Bway, Ch Canal, Varick, Canal, Carmine.	122,312	27,000
(3) Nov. 11/52; Res. of C. C.	Vesey, Bway, Greenwich & Col. Pl., 53d St., 6-7th Ave.	21,010	12,200
(4) Oct. 8/92; Res. of C. C.	53d St., 6th-7th Ave.	11,200	8,000
(5) Apl. 27/94; Res. of C. C.	Lenox Ave., 110th St.	561,600	132,500

Second Avenue Railroad Company.

(1) Dec. 15/53; Res. of C. C.	2d Ave. & Harlem R. to Peck Slip.	$1,194,900	$284,000
(2) Chap. 240, Laws 1872.	2d Ave., Forsyth, Worth, Stuyvesant, 1st Ave. & 86th St.	170,500	39,000
(3) June 23/84; Res. of C. C.	1st Ave., 59th St., to H. R., 96th St.	121,033	27,000

Broadway & Seventh Avenue Railroad Company.

(1) Chap. 513, Laws 1860.	Bway, 7th Ave.	$571,400	$282,000
(2) Oct. 5/92; Res. of C. C.	W. Bway.	23,090	13,000
(3) Oct. 5/92; Res. of C. C.	23d St., Lex. Ave.	79,121	40,000
(4) Chap. 500, Laws 1866.	Sullivan.	15,200	5,000

New York & Harlem Railroad Company.

(1) May 4/38; Res. of C. C.	Bway, Broome, Centre, Park Row.	$251,200	$43,000
(2) Sep. 11/50; Res. of C. C.	Grand, Bway.	40,350	6,000
(3) May 4/73; Res. of C. C.	Bway, Broome to Prince.	54,400	9,000
(4) Chap. 500, Laws 1866.	Bway & 4th Ave. to 23rd.	353,800	70,000

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1 Date of franchise.	2 Initial streets.	3 Reproduction, etc.	4 Value less depreciation.
(5) Dec. 22 / 31; Res. of C. C.	4th Ave., 23d–42d St.	251,200	43,000
(6) Chap. 387, Laws 1859.	Mad. Ave., 42d–81st Sts.	513,600	94,000
(7) Chap. 825, Laws 1872.	Mad. Ave., 86th St.	900,200	150,000
(8) Mar. 8 / 64, Res. of C. C.	34th St., Lex. Ave., E. R.	$69,079	$10,000
Central Crosstown Railroad Company.			
Chap. 160, Laws 1873.	Christopher St. Fy., 23d St. Fy., E. R.	$52,980	$35,000
Christopher & Tenth Street Railroad Company.			
Chap. 301, Laws 1873.	Christopher St. Fy. to E. 10th St. Fy.	$57,000	$34,000
Third Avenue Railroad Company.			
(1) Jan. 1 / 53, Res. of C. C. Laws 1870, Chap. 504.	Bway. & Park Row to 129th St.	$754,073	$512,000
(2) July 20 / 70, Res. of C. C.	125th St., H. R. to Ft. Lee Ferry & Ams. Ave.	274,814	196,900
(3) Chap. 237, Laws 1867.	Ams. Ave., 130th St. to Ft. George.	50,687	22,450
42nd St., Manhattanville & St. Nicholas Avenue Railway Company.			
(1) Chap. 825, Laws 1873.	Manhattan St. & N. R. to 109th St. & E. R.	$95,844	$26,500
	10th Av. & 86th St. to 86th St, E. R.	11,600	2,500
	Manhattan St. & 10th Ave. to 42d St. & E. R.	137,712	33,000
(2) Chap. 252, Laws 1884.	42d St. & 10th Ave. to 42d St. & E. R.; 42d St. & 1st Ave. to 34th St.	58,840	14,000
	42d St. & 7th Ave., Boulevard & Manhattan St.	165,300	54,000

204 **Dry Dock, East Broadway & Battery Railroad Company.**

(1) Chap. 512, Laws 1860.	34th St., E. R., to Cort. St., N. R., & Park Row & Bway.	$113,000	$30,000
(2) Chap. 866, Laws 1866.	Essex, 2d & Columbia Sts.	11,300	3,000
(3) Chap. 868, Laws 1866.	Cort. St., N. R., to Greenwich St. & Desbrosses & N. R. to Greenwich St.	3,200	750
(4) Chap. 833, Laws 1866.	Grand St., E. Bway. to Vestry & West Sts.	37,500	8,500
Union Railway Company of New York City.			
(1) Laws 1863, Chap. 361. H. B. M. & F. Ry. Co.	3d Ave.	$83,160	$68,000
(2) Laws 1867, Chap. 892. H. B. M. & F. Ry. Co.	E. 138th St., W. 161st St., Boston Road and West Farms Road.	102,330	83,000
(3) Laws 1871, Chap. 658. H. B. M. & F. Ry. Co.	Lincoln Ave.	4,500	2,000

1 Date of franchise.	2 Initial streets.	3 Reproduction, etc.	4 Value less depreciation.
(4) Laws 1873, Chap. 517. H. B. M. & F. Ry. Co.	Westchester Ave. and Westchester Turnpike.	28,800	22,000
(5) Laws 1875, Chap. 295. H. B. M. & F. Ry. Co.	East 138th St., W. 3d Ave.	6,660	5,000
(6) June 7/92, W. & W. T. Co., Res. T. B. Town Westchester.	Olin Ave., White Plains Road, Bear Swamp Road.	16,290	12,700
(7) June 7/92, W. F. & W. T. Co., Res. T. B. Town Westchester.	Morris Park Ave.	16,740	12,500
(8) Aug. 26/92, U. Ry. Co., Res. of C. C.	Willis Ave., Melrose Ave., Sedgwick Ave., Jerome Ave., Burnside Ave.	136,350	111,300
205			
(9) Sep. 22/92, U. Ry. Co., Res. B. T. Vil. Williamsbridge.	White Plains Rd.	19,620	15,500
(10) Dec. 28/92, U. Ry. Co., Res. C. C.	135th St. and Mad. Ave., over Bridge to 129th St. (Man.)	18,360	14,000
	Broadway (Bronx)	42,480	31,500
(11) Feb. 18/94, U. Co., Res. B. T. Vil. So. Mt. Vernon.	White Plains Rd.	10,620	7,000
	Westchester Electric Railroad Company.		
(1) Sep. 23/85. Mt. V. & E. R. R. Co.; Res. T. B. Town Eastchester.	S. 5th Ave., Boston Turnpike.	$32,280	$24,500
(2) June 2/91. Mt. V. E. Ry Co. Res. T. B. Town Eastchester.	Town Dock Rd.	9,720	9,000
(3) July 12/86. N. R. & P. R. R. Co.; Res. B. T. Vil. New Rochelle.	Huguenot St., S. of Centre Ave., Union Ave., Charles, Webster Ave.	12,500	9,000
(4) July 12/86. N. R. S. H. R. R. Co.; Res. B. T. Vil. New Rochelle.	Rose St., Main St., Franklin Ave., Hudson Park Road.	17,000	9,000
(5) Mar. 7/98. W. E. R. R. Co. Res. B. T. Vil. New Rochelle.	Mechanic St., Main St., Drake Ave., Pelham Rd., North St., Huguenot St.	58,000	37,000
(6) Dec. 5/98. W. E. R. R. Co.; Res. B. T. Vil. New Rochelle.	Main St., Huguenot St., to Centre Ave.	3,000	1,500
(7) July 1/99. W. E. R. R. Co.; Res. T. B. Town Pelham.	E. 3d St., Wolf's Lane.	11,000	4,500
(8) — 1892. Mt. V. E. Ry. Co.; Res. C. C. City Mt. Vernon.	Lincoln Ave.	5,300	3,800
(9) Nov. 1/98. W. E. R. R. Co.; Res. C. C. City Mt. Vernon.	N. 4th Ave., N. Prospect, S. Fulton Ave.	60,000	47,500
(10) Apl. 18/99. W. E. R. R. Co.; Res. C. C. City Mt. Vernon.	W. 3d St., 4th to 5th Ave.	2,920	400

206 Southern Boulevard Railroad Co.

1 Date of franchise.	2 Initial streets.	3 Reproduction, etc.	4 Value less depreciation.
Mar. 16/86 S. B. R. R. Co., Res. C. C. N. Y. City.	Southern Boulevard.	$68,580	$62,500
Tarrytown, White Plains & Mamaroneck Railway Co.			
(1) Aug. 17/96. N. Y. E. & W. P. Ry. Co.; Res. T. B. Town Greenburg.	W-ite Plains & Tarrytown Roads.	$39,240	$22,700
(2) Mar. 3/96. N. Y. E. & W. P. Ry.; Res. T. B. Town Harrison.	Harrison St., Underhill Ave., Boulevard.	6,750	1,500
(3) — 1898. T. W. P. & M. Ry. Co.; Res. T. B. Town Harrison.	Mamaroneck Ave.	11,790	2,725
(4) Mar. 2/98. T. W. P. & M. Ry. Co.; Res. T. B. Vil. Mamaroneck.	Mamaroneck Ave.	16,830	7,400
(5) Apl. 1/99. T. W. P. & M. Ry. Co.; Res. T. B. Town Scarsdale.	White Plains Rd.	1,000	900
(6) Mar. 9/98. T. W. P. & M. Ry. Co.; Res. T. B. Town White Plains.	Mamaroneck Ave.	25,110	25,000
(7) Sep. 14/97. Res. B. T. Vil. White Plains. T. W. P. & M. Ry. Co.	White Plains Road, Tarrytown Rd., R. R. Ave., Broadway, Lake and Harrison Sts.	19,620	10,500
Yonkers Railroad Company.			
(1) Aug. 2/94. N. & S. E. R. R. Co.; Res. C. C.	Palisade Ave., Park Ave., Shonnard Place, S. Broadway.	32,580	17,500
(2) Feb. 8/86. Y. R. R. Co.; Res. C. C.	Warburton Ave., Main, Elm, Nepperhan Ave., Riverdale Ave., Yonkers Ave., New Main St.	99,360	53,000

207 *Abbreviations in Foregoing Tabulations.*

B. T.—Board of Trustees.
Chap.—Laws—Act of Legislature.
T. B.—Town Board.
Res. of C. C.—Resolution of Common Council.
Ave. C. R. R. Co.—Avenue C Railroad Co.
B'way Sur. R. R. Co.—Broadway Surface Railroad Co.
Chmbrs. & G. St. R. R. Co.—Chambers & Grand St. F. Railroad Co.
Col. & 9th Ave. R. R. Co.—Columbus & 9th Avenue Railroad Co.
H. B. M. & F. Ry. Co.—Harlem Bridge, Morrisania & Fordham Ry. Co.
H. W. St. & P. F. R. R. Co.—Houston, West Street & Pavonia Ferry Railroad Co.
Lex. Ave. & P. F. R. R. Co.—Lexington Avenue & Pavonia Ferry Railroad Co.
Met. C. T. R. R. Co.—Metropolitan Crosstown Railroad Co.

Met. S. Ry. Co.—Metropolitan Street Railway Co.
Mt. V. & E. R. Co.—Mt. Vernon & Eastchester Railroad Co.
Mt. V. & E. Ry. Co.—Mt. Vernon Electric Railway Co.
N. Y. E. & W. Ry. Co.—New York, Elmsford & White Plains Railway Co.
N. R. S. H. R. R. Co.—New Rochelle Street Horse Railroad Co.
N. & S. E. R. R. Co.—North & South Electric Railroad Co.
N. R. & P. R. R. Co.—New Rochelle & Pelham Railroad Co.
S. B. R. R. Co.—Southern Boulevard Railroad Co.
S. F. Ry. Co.—South Ferry Railroad Co.
T. W. P. & M. Ry. Co.—Tarrytown, White Plains & Mamaroneck R. R. Co.
34th St. Fy. & 11th Ave. R. R. Co.—34th Street Ferry & Eleventh Avenue Railroad Co.
U. Ry. Co.—Union Railway Co. of New York City.
W. E. R. R. Co.—Westchester Electric Railroad Co.
W. F. & W. T. Co.—West Farms & Westchester Traction Co.
W. & W. T. Co.—Williamsbridge & Westchester Traction Co.
Y. R. R. Co.—Yonkers Railroad Co.

208 PETER DEYO, recalled:

Examined by Mr. PAGE:

Q. Were the various forms of reports and the various calls for information sent out by the State Board of Tax Commissioners to the various corporations in the State sent out by you, or under your supervision?

A. Yes, sir.

Q. Did all the information that was called for by the State board, so far as the earnings of the corporations are concerned, or so far as statistics are concerned which related to the construction of the surface railways, or the cost of reconstruction, call for information relating to the period ending June 30, 1899?

A. So far as the report, yes.

The WITNESS: I think the supplemental reports called for the information at the same time, the same date.

Adjourned to Wednesday, June 26th, 1901, at 10.30 a. m.

WEDNESDAY, *June* 26, 1901.

Adjourned to meet at the State capitol at Albany, on Tuesday, July 2, 1901, at 11.30 a. m.

209 ALBANY, N. Y., TUESDAY, *July* 2, 1901.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.*
The Metropolitan Street Railway Company
against
THE STATE BOARD OF TAX COMMISSIONERS. } (Continued.)

The parties met pursuant to adjournment.
Present the same as before.

Mr. PAGE: I offer in evidence an extract from the report of the State Board of Tax Commissioners for the year 1899, from the tenth page of the report:

"The following table of percentages, showing relation of assessed value to full actual value of 100; and equalization based thereon for the several counties was unanimously adopted."

Defendant's counsel objected on the following grounds:

First. It is incompetent, irrelevant and hearsay.

Second. It is not proper or competent evidence to show the percentage which real estate in the city of New York was assessed at in the year 1899. It gives simply the relative amount as to the other counties and not a percentage of the full value of the property in that city.

210 Third. It is not a judgment or decree, judicial decision or determination of any kind, and is incompetent as evidence of the facts set forth therein.

Fourth. It is a memorandum or table prepared by an official board for an entirely different purpose and having no connection with or relation to the present litigation, and is not binding upon the Board of Tax Commissioners, either as a body or as individuals.

Fifth. It is not binding upon the people of the State of New York, who are the real parties in interest, this writ running against these defendants as *quasi* judicial officers. No previous act, decision or determination made by them in another or different proceeding or even in this proceeding is in any wise binding upon the people of the State.

Sixth. No memorandum, statement, report or decision of the State Board of Tax Commissioners or by the State board of equalization as to the assumed percentage at which property in the city of New York is assessed is or can be binding as against the State of New York or its officers or against the people, the actual parties in this proceeding so far as such statements assume to fix the percentage of full value at which property is assessed in the city of New York.

Seventh. The State board has no power or authority to determine as between different parcels of real estate in the city of New York, other than special franchises as to whether any parcel or parcels is or are assessed at full value or less than full value, but has

211 only authority under the statute to determine the ratio of percentage at which all property is assessed in the county as compared with other counties, and that power solely for the purpose of equalization. The State board has not attempted to determine the valuation except as a whole for a single purpose.

Eighth. Since the proportion of the State tax to the total tax levy is only seven per cent., the State board has no power or authority to determine the percentage at which any specific piece or pieces of property may be assessed as against other property in the city of New York, or to determine that all of said property other than special franchises, is assessed at less than the full value for any purpose other than that of equalization between the different counties of the State.

Mr. PAGE: As I understand it, no objection is made to this report as not being a correct copy of the original report of which it purports to be a published copy?

Mr. COMAN: No, sir; but that portion from which you quote does not purport to give the action of the State Board of Tax Commissioners. It purports to give the action of the State board of equalization, and this is not a report of the State board of equalization.

Mr. PAGE: I take it it is not denied that the State Board of Tax Commissioners are *ex-officio* members of the State board of equalization?

Mr. COMAN: No, sir; that is not denied. They are three members of that board, which consists of ten members.

Objection overruled. Defendant excepts.

Mr. PAGE: I continue to read from page 10, "New York
212 percentage, 64 per cent." I now read the report of the State Board of Tax Commissioners, of which the statement from which I have previously read was a part. The following is the report, the statement being a part of it:

"At a meeting of the State board of equalization, held at the office of the secretary of state, in the city of Albany, on the fifth day of September, 1899.

Present, S. Fred Nixon, speaker; William J. Morgan, comptroller; John T. McDonough, secretary of state; John C. Davies, attorney-general; John P. Jaeckel, treasurer; Edward A. Bond, State engineer and surveyor; Martin Heermance, tax commissioner; George E. Priest, tax commissioner; J. Edgar Leaycraft, tax commissioner.

Absent: Timothy L. Woodruff, lieutenant-governor.

The following report was submitted:"

"The State Board of Tax Commissioners respectfully submit the following report:

"The total assessed value of real and personal property taxable locally for all purposes in the State of New York for the year 1898 shows a net gain over the assessment of 1897 of $177,785,805. The increase for the two years prior thereto was $529,898,116, making an aggregate net increase for the three years last past of $707,683,921. This, of course, does not include the large increase in the county of New York under the present assessment, which will not be officially reported until December of this year, and will be considered in the State equalization for 1900.

"During the present year we have visited officially the counties of Cattaraugus, Chenango, Clinton, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Lewis, Livingston, Monroe, Nassau, New York, Oneida, Otsego, Queens, Rensselaer,
213 Richmond, Rockland, Schenectady, Schoharie, Schuyler, Steuben, Sullivan, Ulster, Warren and Washington."

"In all of these counties we have inquired as closely as possible into the methods of assessment, in each instance examining witnesses under oath, and using every means available in procuring evidence upon which to base a table of equalization.

"Committees appointed by boards of supervisors have appeared before us and presented arguments both oral and written on behalf of their respective counties.

We submit herewith a digest of the evidence upon which this board has prepared the following list of percentages and table of equalization based thereon.

"All of which is respectfully submitted.

"MARTIN HEERMANCE,
"J. EDGAR LEAYCRAFT,
"GEO. E. PRIEST,
"*State Board of Tax Commissioners.*"

This report was presented at the meeting of the State board of equalization on the 5th day of September, 1899.

Mr. FIERO: We object to that on the ground that it was before the franchise tax went into effect and has no relation to or connection with the present assessment, and move to strike it out on that ground.

Objection granted. Plaintiff excepts.

Mr. PAGE: I now read from the annual report of the State Board of Tax Commissioners of the State of New York for the year 1900.

Mr. COMAN: To that we make the same objection as before, to the last offer.

Objection overruled. Exception.

Mr. PAGE: I read from page 27, as follows:

"To the State board of equalization," as herein set forth, which is dated Albany, September 4, 1900, and which is signed by
214 George E. Priest, J. Edgar Leaycraft, Lester F. Stearns, State board of tax commissioners. I read extracts from the same as far as they bear on this proceeding:

"The special franchise valuations, upon property in public streets and places, appear for the first time upon the local assessment rolls of 1900, for all the purposes of local taxation.

"During the present year official visitations have been made to the following counties: Albany, Alleghany, Broome, Cayuga, Chautauqua, Chemung, Columbia, Cortland, Erie, Genesee, Herkimer, Jefferson, Madison, Montgomery, Niagara, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Saratoga, Seneca, St. Lawrence, Tioga, Tompkins, Wayne, Westchester, Wyoming, Yates.

"In each of these counties the attendance of the assessors and supervisors has been uniformly large, and the sessions mutually instructive and beneficial.

"We have, as thoroughly as time permitted, searched into the methods of assessment, in each instance examining the witnesses under oath, have inquired into sales and their character as compared with assessments preceding and following such sales, have personally examined some of the property treated on the rolls in many cities and county seats, and have sought by every means open to us to obtain information available for the preparation of the table of equalization which we herewith present.

"We herewith furnish the assembled data upon which we have formulated the list of percentages accorded to the counties, and the proposed table of equalization."

I now read from the table of equalization annexed to the foregoing report, which appears at page 29 of the printed report:

"The following table of percentages, showing relation of as-
215 sessed value to full actual value of 100, and equalization based thereon for the several counties, was unanimously adopted: * * * New York, percentage, 67."

Mr. COMAN: If your honor please, it appears from the report just read that the commissioners did not visit the city of New York during the year 1900. I move to strike out the evidence upon that ground as well as upon all the grounds stated in the objection to its reception.

Motion denied. Exception.

Mr. PAGE: If your honor please, we think, in view of the point just made, we are entitled to have the extracts from the report of the preceding year stand, in that it specifically appears in that year they did visit the city of New York.

Mr. FIERO: They give a different result.

The REFEREE: I don't see that it is very important. You have got their statement they made of the examination they thought was necessary, probably.

Report for 1900 marked for identification, "J. M. R. July 2, 1901" (see p. 341).

Mr. PAGE: I now read from the report contained in the same document made to the legislature by the State Board of Tax Commissioners, the board now in office, dated January 25, 1901. The portion which I now read is as follows, at page 20:

Mr. COMAN: The same objection as previously made, and exception.

The REFEREE: The same ruling.

"Two important variations desirable.

"As material amendments we urgently recommend as of paramount importance, the following:"

216 "Second. The law should authorize and direct this board to equalize, after hearings, special franchise valuations found by it to conform with the local assessment of other real estate in the tax district where special franchises exist, upon such proofs and information as the board can obtain.

"Such authorization will afford the warrant of law for supplying a remedy in the first instance to corporations. The corporations are now compelled in every case involving great or small amounts, to resort to a court proceeding for a reduction which this department may be willing to admit is equitable; but is not by the law in its present reading permitted to make."

We offer this in evidence as proof of the fact.

The REFEREE: Of what fact?

Motion to strike out granted. Plaintiff excepts.

FREDERICK G. HOBBS, sworn in behalf of all the plaintiffs, testified:

Examined by Mr. PAGE:

Q. Will you please state your occupation?
A. A. Real estate broker.
Q. Where do you do business?
A. 284 Columbus avenue, New York city.
Q. How long have you been in business there?
A. About twelve years.
Q. Does your firm do a general selling business in real estate throughout the city?
A. Yes, sir.
Q. Have you made sales during the year 1900 of real estate personally?
A. Yes, sir.
Q. Have you examined the assessment rolls in the city of New York for that year for the purpose of comparing the assessed values of the property which you have sold with the prices at which such property was sold?
A. I have.
217 Q. In your opinion did the assessed value of such property equal, exceed or fall short of the actual value of the same?

Objected to upon the ground it is incompetent and that the testimony should be confined to specific pieces of property, and the witness should state facts.

(The REFEREE:)

Q. Have you in mind any particular case, Mr. Hobbs?
A. Yes, sir.

Mr. PAGE: I submit we are entitled to an answer to the original question, he having been, in our opinion, properly qualified as an expert.

The REFEREE: I will allow him to state that in the case of sales made by him and comparing the prices obtained with the assessments upon the same property, that in all cases the assessed values were less than the sale values.

Defendant excepts.

By Mr. PAGE:

Q. Have you prepared a list of the parcels of property which you sold during the year 1900, the amount of the assessed value of the same during that year and the percentage of actual value to assessed value in the several cases?
A. Yes, sir.
Q. Will you produce such a list; I now refer to the year 1900?
A. Yes, sir. (Producing same.)

Q. Are these percentages which you have calculated correct?
A. They are.
Q. Are the tables which you have given of the selling prices correct, and of the assessed values?
A. Yes, sir.

218 The following tabulations were then read in evidence:

No. 1.	Location of property.	Actual value.	Assessed value.	Assessed value equal — % of actual value.
1900.				
Jan. 10	149 Riverside drive to A. G. Loomis	$73,500	$40,000	54.421%
Jan. 22	321 W. 106th St. to Chas. Osborn.	35,500	18,000	50.704%
Jan. 22	1228 Madison Ave. to S. & S.	16,000	11,000	68.750%
Jan. 29	S. E. cor. B'way and 92d St., 161.3 x 108 x 117	199,000	90,000	45.226%
Jan. 29	1772 Amsterdam Ave. to Martha B. Moshier	33,000	17,000	51.515%
Jan. 30	1228 Madison Ave. to Frank Wise.	15,750	11,000	69.841%
Feb. 1	125 W. 77th St., J. Wallace Morrell	51,000	20,000	48.780%
Feb. 15	2726 B'way, Jas. F. McGarry	30,000	12,000	40%
Feb. 13	13 lots, 101st St., West End Ave. to B'way. (125 x 100.11 inside 5 lots $30,000; N. W. cor. B'way, 101st St., 96.7 x 100, $39,500; N. E. cor. W. E. Ave., 101st St., 100.11 x 100 $40,500)	225,000	110,000	48.888%
Feb. 21	169 W. 76th St.	26,000	18,000	59.230%
Mar. 1	Two lots, north side 86th St., 160 ft. east of Riverside drive	42,000	24,000	57.142%
Mar. 26	9 East 76th St., John N. Golding	73,750	40,000	54.237%
Apr. 4	22 W. 87th St., Patrick Moore	37,000	22,500	60.810%
Apr. 10	10 W. 76th St., Frederick H. Parks (1900-35,000, p.) (1901)	77,500	43,000	55.483%
Apr. 11	B'way, east side, 108 ft. south 92nd St., 53 x 102 (July 28, '00—auction $57,750)	56,000	42,000	75%
	Forwarded	$891,000	$518,500	
219				
	Brought forward	981,000	518,500	
Apr. 25	323 W. 86th St., A. B. Kight to Wm. H. Hullick, 18[6] (1901.)	32,250	25,000	77.519%
June 1	160 W. 73rd St., J. H. Armstrong.	22,500	15,000	66.666%
June 27	270 W. 93rd St., Warden T. Rosen.	22,000	15,000	68.181%
June 28	614 W. 114th St., G. L. Slawson.	16,000	10,000	62.500%
July 10	524 West End Av., Fannie M. Chapin, Waldron Williams	43,000	27,500	69.953%
July 10	Lot south side 112th St., 250 ft. west 7th Ave., A. H. Brennan to Hallahan Ahern	10,750	5,000	46.511%
Aug. 15	148 W. 70th St., J. P. Huggins to Dr. Embury	25,000	18,500	74%

	Location of property.	Actual value.	Assessed value.	Assessed value equal — % of actual value.
Aug. 31	342, 344 W. 85th St., Edw. W. Kilpatrick to R. R. Stratton (17 ft.).	$100,000	$65,000	65%
Sept. 5	267 W. 71st St., John R. Thorp to Wm. T. Evans	22,100	13,500	61.086%
Sept. 12	206 W. 71st St., Sarah C. Newman to Rodrigues	19,000	14,500	76.316%
Sept. 13	274 W. 99th St., E. A. Becker to H. P. Penning	21,500	14,000	65.116%
Oct. 22	36 W. 73rd St., Ella L. Montalbo to Mr. Clark	45,000	24,000	53.333%
Nov. 20	322 W. 80th St., Clarence True to E. B. Meyrowitz	38,000	24,000	63.157%
	Forwarded	$1,398,100	$789,500	
No. 2.				
1900.	Brought forward	$1,398,100	789,500	
Nov. 24	S. E. cor. B'way and 94th St., 83.3 x 146, A. Bruns to A. E. and M. E. Bingham	120,000	47,250	39,375%
Nov. 24	Sale lots south side 94th St., 110 ft. west of West End Ave., 190 x 100.8½, F. M. Jencks to R. Axelrod	130,000	35,600	27,382%
Dec. 5	Sale of 168 W. 73rd St. for Mrs. Sanders to Wm. Stokesbury	17,750	15,000	84,507%
Dec. 24	314 W. 105th St., Umberfield to B. R. Merwin (16000 p.–1900).	39,250 (1900.)	20,000	50,955%
		$1,705,100	$907,350	53,213%

220 Q. Does this statement comprise all of the sales which you have made?

A. All the cash sales made during that year, exclusive of exchange.

Q. Were the prices which you obtained in all of those cases the best price which you could obtain for the property?

A. Yes, sir.

Q. Are you familiar generally with sales throughout the city of New York?

A. More particularly on the west side.

Q. Are you familiar generally with real estate transactions throughout the city?

A. Yes, sir.

Cross-examination by Mr. COMAN:

Q. All of the sales which are indicated upon this statement which has been put in evidence are of property north of 70th street, or at 70th street and further north?

A. Yes, sir.
Q. That is what you call the upper portion of the west side?
A. Yes, sir.
Q. Is it a fact that values are quite rapidly increasing in that portion of the city?
A. They are advancing in some cases.
Q. As a rule?
A. As a rule I think they are advancing; there are exceptions.
Q. I understand you, these are all the cash sales you made during the year 1900?
A. Yes, sir.
Q. By that you mean the actual sales?
A. Yes, sir.
Q. Not speaking of exchanges of property?
A. No, sir.
Q. Have you any statement of your sales during the period from June, 1899, to January, 1900?
A. Yes, sir.
Q. Have you it here?
A. Yes. sir.
Q. Will you produce it?
A. Yes, sir. (Producing same.)
Q. In the cases of these sales upon the statement which has been put in evidence, were your sales accompanied by loans to the purchaser?
A. What do you mean, leaving a purchase money mortgage on the property?
221 Q. Or loans made for the purpose of erecting buildings?
A. The sale on April 11th, I think, was made at $56,000; there was a building loan, and afterwards there was some trouble with it, and afterwards it was sold at cost, July 28th, for $57,750, and bought by an outsider.
Q. Are there any other cases of building loans there?
A. Yes, sir; there (indicating).
Q. In the sale of the southeast corner of Broadway and 94th street the sale was for $120,000?
A. Yes, sir.
Q. How much was loaned?
A. I have forgotten.
Q. Could you tell approximately?
A. I have no recollection.
Q. The sale of November 24th, lot south side of 94th street, west of West End avenue, for $130,000, was also accompanied by a building loan?
A. Yes, sir.
Q. Do you remember how much that was?
A. No, sir.
Q. You couldn't tell approximately?
A. No, sir.

Q. Those are the only instances that you now recall?
A. Yes, sir.

Re-direct examination by Mr. PAGE:

Q. Referring to the tabulation, concerning which you have last testified, it contains a statement of sales for six months beginning June, 1899, and extending to January 1, 1900, does it not?
A. Yes, sir.
Q. Is that a correct statement of sales which you have made and of the assessed values of those parcels of property?
A. Yes, sir.
Q. Are the computations connected with those correct as contained in that statement?
A. Yes, sir.

Plaintiff's counsel (Mr. Page) offered in evidence as further testimony on the part of this witness, the tabulation of his sales and assessed values of the same property.

222

No. 1.	Location of property.	Actual value.	Ass'd value.	Ass'd value equal to per cent. of actual value.
1899.				
Jan. 10	S. W. cor. B'way & 115th St., 100.11 x 75, Melvena MacBride to W. L. Crow & Taylor ($31,500—1900)..	$65,000	$27,000	41.538%
Jan. 27	N. E. cor. B'way & 113th St., 50.11 x 100, S. & H. to Gunn and Grant	45,000	20,000	44.444%
Jan. 28	25 W. 90th St., G. A. Fisher to E. M. Black, 1899—$12,000 p...	27,600 (1900)	18,000	65.217%
Jan. 31	256 W. 93d St., Emma Hopping to John Marshall	25,000	18,000	72. %
Feb. 3	319 W. 80th St., Clarence C. True to Winchester Fitch	32,000	20,000	62.500%
Feb. 7	546, 548, 550 W. 53d St., E. F. Hassey to Fred. Brakman, $18,000 each	54,000	33,000	61.111%
Feb. 9	Two lots south side 112th St., 200 ft. west of 7th Ave., M. Keppler to Hallahan Ahearn	21,500	10,000	46.511%
Feb. 20	S. W. cor. Central park west & 71st, 100.5 x 125	200,000	92,000	46. %
Mar. 2	169 W. 76th St., Egan & Hallecy to Alice Newhouse.	25,000	18,000	72. %
Mar. 3	Three lots west side B'way, 25 ft. south 114th St., F. M. Jencks to Mrs. Clarke	46,500	21,000	45.161%
Mar. 8	S. W. cor. Boulevard & 112th St., J. L. O'Brien to J. W. White.	40,000	15,000	37.500%
	Forwarded	$581,600	$292,000	

		Location of property.	Actual value.	Ass'd value.	Ass'd value equal to per cent. of actual value.
223					
1899.		Brought forward.....	$581,600	$292,000	
Mar.	13	Plot 80 x 100.5 north side 69th St., 265 ft. west of Amsterdam Ave., Egan & Hallecy to Henry Oppenheimer.....	30,000	20,500	68.333%
Mar.	14	532 W. 114th St., E. S. Kennedy to Emma F. Hopping.....	25,000 (1900)	13,000	52. %
Mar.	17	133 W. 80th St., Gertrude E. Shannon to J. Arthur Joseph.....	30,000	19,000	63.333%
Mar.	22	Plot 50 x 100.8½ south side 93d St., 200 ft. west of Central park west; assessed in 1899 in one large plot; p'd $42,000.....	.....	.....	.....
Mar.	25	315 W. 76th St., A. Greer to Wm. H. Park.....	33,750	21,000	62.222%
Mar.	28	S. W. cor. B'way & 90th St., 50 x 100, F. M. Jencks to Egan & Hallecy.....	70,000	28,500	40.714%
Mar.	29	Mary and Margaret McConville to Albert D. Oppenheim, 18 W. 87th St.....	31,000	22,000	70.967%
Apr.	7	Plot 50 x 100, west side B'way, 50 ft. north 90th St., to Mrs. Clark.	51,000	24,000	47.058%
Apr.	12	103 W. 86th St., D. Willis James to Dr. Palmer.....	28,000	24,000	85.714%
Apr.	13	119 W. 127th St., Mary E. Crawford to Ella W. Eddbes.....	10,750	8,000	74 418%
Apr.	26	N. W. cor. B'way & 87th St., 100 x 150, J. M. Horton to Mrs. Clark.	130,000	64,500	49.616%
224		Forwarded.....	$1,021,100	$536,500	
No. 2.					
1899.		Brought forward.....	$1,021,100	$536,500	
May	5	308 W. 104th St., Ethel L. Benton to Shepard Knapp.....	23,000	15,500	67.391%
May	27	N. E. cor. Amsterdam Ave. & 107th St., 50.7 x 100, Chas. Weisbecker to David Richey.....	41,500	17,000	40.963%
June	1	7 W. 95th St., Peter Wagner to Fritz Hill.....	33,000	20,000	60.606%
June	1	202 B'way, A. B. Brown *et al.* to O. F. Zollikoffer.....	300,000	275,000	91.666%
June	16	320 W. 91st St., R. E. Dowling to J. J. Smith.....	45,000	25,000	55.555%
July	3	258 W. 75th St., Alice C. C. Royce to Harry J. Crawford.....	22,000	8,500	38.636%
July	10	S. W. cor. 2d Ave. & 72d St., 102.2 x 59, Martin Metzger to Egan & Hallecy.....	49,000	14,000	28.571%
July	21	37 W. 87th St., W. D. Starr to W. F. H. Armstrong.....	43,000	22,000	51.162%
Aug.	16	315 W. 88th St., Jas. Carlew to Hattie Mendelson.....	43,000	21,000	48.837%

	Location of property.	Actual value.	Ass'd value.	Ass'd value equal to per cent. of actual value.
Aug. 22	435 West End Ave., Metropolitan Improvement Co., to Mr. Quigg.	$27,000	$18,000	66.666%
Aug. 25	Riverside drive, house, 20 x 89, S. & S., to Mr. Wiggins.....	47,500	32,000	67.368%
	Forward.....	$1,695,100	$1,004,500	
225	Brought forward.....	$1,695,100	$1,004,500	
1899.				
Sept. 12	2070 8th Ave., N. E. cor. 112th St., A. McDowell to Leasenfeld.....	63,000 (1900)	30,000	47.619%
Sept. 14	259 W. 90th St., Frame & Son to Otto Seyd.....	27,500	15,000	58.181%
Sept. 27	151 Riverside drive, Hall to Murphy. (1899—p. $23,000)....	73,500 (1900)	40,000	54.421%
Sept. 27	302 W. 81st St., Marie E. Taylor to Fred Seggerman.	31,300	17,000	54.313%
Sept. 28	20 W. 76th St., Jas. Carlew to Thos. Bassford. (1899—$30,000 p.).....	70,000 (1900)	40,000	57.014%
Nov. 16	Four lots north side 84th St., 100 ft. west West End Ave., Chas. Gahren to Henry Oppenheimer	50,000	36,500	73. %
Nov. 28	2083 8th Ave., David Richey to Martha B. Moshier	34,000 (1900)	18,000	52.941%
Dec. 29	Lots on B'way, 26 ft. north 76th St., 80 x 134 x 102.2 x 25 x 89.6½ C. F. Hoffman to Manhattan Congregational church.....	80,000	51,000	63.75 %
		$2,124,100	$1,253,000	58.984%

226 Q. Your testimony is the same for the six months prior to the six months I have previously mentioned, beginning January 1 and extending to July 1, 1899; sales by you and assessed values and computations are correct?

A. Yes, sir.

Re-cross-examination by Mr. COMAN:

Q. The sale of January 29th, southeast corner of Broadway and 92d street, for $199,000, was there a building loan with that; was that sold to Bingham Brothers?

A. No, sir; that was sold to a woman named Axelrod.

Q. Was there a loan with it?
A. Yes.
Q. Could you tell how much?
A. No.

Recess.

Afternoon Session.

GEORGE E. PRIEST, sworn for all the plaintiffs, and testified:

Examined by Mr. PAGE:

Q. How long have you been a State tax commissioner?
A. I was appointed on the 14th day of April, 1899.
Q. Have you participated, as president and as a member of the State Board of Tax Commissioners, in making the assessments of the various relator companies for the year 1900?
A. I did, all of them.
Q. In making the assessments against the several companies, do your assessments as made include an assessment for the value of the intangible franchise and an assessment for the value of the tangible property connected therewith?
A. The values which we found were the values of the tangible property in the streets, together with the right to have and use the real property.

227 By the REFEREE:

Q. You assessed the value of both?
A. We found the two together, the value of the tangible and the intangible, as the law directs.

Mr. HILL: I think we had better strike off "as the law directs."
The REFEREE: Strike out "as the law directs."

By Mr. PAGE:

Q. In case of the Metropolitan Street railway, in which case the assessment, including the tangible property, has been fixed by the board at $18,377,911, are you able to state what portion of that assessment constitutes the value of the tangible property included in that amount?

Objected to upon the ground that the tax commissioners, being judicial officers, cannot be examined as to their acts; that their acts speak for themselves and they cannot be interrogated or examined as to the manner in which they arrive at the assessment, or as to how the assessment is made up.
After argument the objection was overruled. Exception.

A. No, I am unable to differentiate.
Q. In respect to the various other companies, Mr. Priest, the assessments of which are before us in this proceeding, do you make the same answer to a similar question?

Same objection, ruling and exception.

A. I do, yes, sir.

Q. These assessments were made by the board, were they not, at the time they were finally arrived at? I refer now to the various assessments which were made by your board in the case of these various railroad companies which we are now considering;

228 the various assessments which were finally entered upon your rolls were assessments which were fixed by the entire board?

A. Yes, sir, by the three commissioners.

Q. You were present when these various assessments were made?

A. I was in each and every case.

Q. Was there any differentiation made?

A. As between the tangible or intangible?

Q. Yes?

Same objection, ruling and exception.

A. No, sir, there was not.

Q. The Metropolitan Street railway, Mr. Priest, specifies in its return some eighteen franchises; I now refer to Schedule C. When your assessments were made in the case of that company, did you consider separately the several distinct eighteen franchises, or did you consider all of the franchises together in arriving at your assessments?

Same objection, ruling and exception.

A. Won't you be more definite in that question, please? Do you mean as to any one of these constituent lines?

Q. No, I am speaking of the Metropolitan Street Railway Co.?

A. The system as a whole?

Q. No. I now lay before you an exhibit which is known as Exhibit No. 63, and that shows the lines which are owned by the Metropolitan Street Railway Co. I differentiate between the expression "company" and "system." There are here eight distinct colors, but according to the return these constitute all together eighteen franchises; now, I ask you, in fixing the assessment upon the franchises of this system did the board assess each franchise separately, or did you assess all the franchises of the Metropolitan Street Railway Co. together? Again I discriminate between "system" and "company." I now mean the forty-seven miles of track

229 owned by the Metropolitan Street Railway Co., and which track extends over eighteen franchises?

Objected to on the same ground, and further, that it appears by the assessments as to what was assessed, the evidence is incompetent and improper.

Objection overruled. Exception.

A. The certificate of valuation found by us would show that, I think, which you have in mind.

Q. The assessment against the Metropolitan Street Railway Co. is $18,000,000.

A. You are speaking of the Metropolitan railway?

Q. Yes! That company owns eighteen franchises acquired at different dates?

A. If that valuation is certified by us at $18,000,000.

Q. Does that indicate to your mind in assessing them you took them all as one franchise?

A. Yes, that was taken as one franchise, if that is the total of the valuation of that line.

Q. With respect to the various other companies, whose assessments are now before the court in this proceeding, do you make the same answer to a similar question, namely, where there is one assessment in your return or in the record in case of one company, that indicates all the several special franchises of that company were assessed as one franchise?

A. Yes, if I understand the question, that is the answer in each case.

Q. The Broadway Surface Railway Co., or the Broadway Surface Co. franchise, which is one of the franchises of this company indicated upon this map, runs from the Battery to 15th street; this distance of several miles is a part of the 47 miles constituting the entire mileage of that company; in fixing your assessment did you put a separate valuation upon this Broadway surface line which runs from the Battery to 15th street, or did you include the valuation
230 upon this franchise with the valuation which you put in the aggregate upon the various franchises of this company?

A. I think we found that valuation, the Broadway and Seventh Avenue—if I may see the report, please. (Referring to the report.)

Q. The different franchises of this system are represented here in eight colors; altogether there are 18 distinct franchises; as I understand it, you assessed or made one assessment against all the railroad lines which are represented upon this map, understanding that they are all the lines owned by the Metropolitan Street Railway Company and constituting in the aggregate some 47 miles?

A. Yes, as reported; we fixed the valuation upon these constituent companies as they were reported, if that answers it.

Q. Unless there was and unless there appears upon your assessment rolls a separate assessment for each separate franchise you did not in arriving at your valuation fix a separate assessment?

A. No; it was treated as the one franchise, even though there might have been several in the same line, if it was reported to us as one constituent company.

Q. Did the board, in making this assessment, consider that all the lines owned by the Metropolitan Street Railway Co. were connected?

Same objection, ruling and exception.

Q. That is to say, the Broadway line shown upon this map, which is owned by this company, stops at 15th street, and begins again on Broadway at about 66th street, there being no railway franchise owned by the Metropolitan Street Railway Co. for the road which runs from 66th street along Broadway to 15th street?

A. Your question is, whether we considered that as continuous mileage or not?

Q. Whether in making this assessment of $10,000,000 upon
231 these railway lines here you assumed there was a connection and continuous route on Broadway through its entire length from the Battery to 106th street?

A. We had the exact mileage of it as reported to us by the company; I can't recall that detail now.

Q. It being the fact that the Metropolitan owns no franchise between 15th street and 66th street upon Broadway did you consider that they had the right, acquired from other companies, to operate a continuous line from the Battery to 106th street?

A. If they did have such right it was considered by us at the time.

Q. You did consider the fact that this company operates a continuous line along Broadway from the Battery to 106th street?

A. Yes, sir; I think that would be true.

Q. Did you consider, or did the board consider, whether or not the Metropolitan Street Railway Co. owned the right to run on Broadway from 15th street to 66th street, or whether they leased the right?

A. Yes, sir; that was considered.

Q. What effect was given to the consideration which you now refer to?

Objected to upon the same grounds as heretofore, and that the inquiry cannot be made of the commissioners as to their mental attitude toward any of these questions.

The REFEREE: The question is, what they did.

Mr. FIERO: That I don't object to.

Q. Did you consider that the franchises of the Metropolitan Street Railway Co. were more valuable or less valuable by reason of the fact that they had acquired the right from other companies to run on Broadway from 15th street to 66th street and does give continuous roads the entire length of Broadway?

Same objection. Objection overruled.

232 A. I have no recollection of the operations of my mind at that time, but as a general proposition I should say most certainly that would have been the view taken of it.

Q. Was this same rule applied in case of the assessments which you made with respect to the various other street railway companies in New York which you assessed?

A. Whether they were continuous lines owned by the company or whether the connection was made through lease of other companies?

Q. Exactly?

A. Yes, it would seem to me they would be more valuable because being made continuous.

Q. In making these various assessments did you consider in all

cases whether or not one company had a contract with another company to run over its lines?

A. Yes, we had copies of those contracts, I think.

Q. Did you regard that as an appreciating circumstance or a depreciating circumstance in your valuation?

A. Well, where they guarantee very large dividends it would be hard to tell which would derive the greater benefit, if that be the object of the inquiry.

—. In case of companies which had contracts to use the lines of other railroad companies, did you regard that contractual arrangement as valuable to the company possessing it?

Objected to as indefinite.

A. They both possessed it.

Q. That is to the operating company which operated over the lines of the other company?

A. Certainly, I should hold that of value.

Q. You did regard it as of value?

A. Certainly we regarded it as of value.

Q. Did this consideration enter into the assessment which the board placed upon the various special franchises of each com-

233 pany?

A. We endeavored to consider all the element, including this one.

Q. That was an element which, in the judgment of the board, added to the value of the special franchise, did it not?

A. I would like to answer that question intelligently, but first I must understand it.

(Question repeated.)

A. The fact of their having control and operation of those leased lines, is that it?

Q. Exactly?

A. Yes, it did.

Q. Is that true in case of each company which had a contractual arrangement with another company, namely, that this contractual arrangement was regarded as valuable and you so considered it in making the assessment upon the special franchise of each company?

A. Yes; the nearer it became an entirety the greater the value.

Q. Did you consider in making your assessments a map showing the entire system of the Metropolitan Street Railway Company?

A. We had such a map and used it.

Q. Did you, in fixing your valuation of the special franchises of the Metropolitan Street Railway Company, consider that this was one system operated as a whole as differentiated from these several franchises as operated by the several companies owning the same?

Same objection, ruling and exception.

A. Why, we fixed the valuation upon these constituent companies as they were reported to us on June 30, 1899.

Q. Did the board value the franchises of all the companies comprised in the Metropolitan Street Railway Company system as undivided parts of an entire system or several companies operated or controlled by one company?

234 A. No; where they were reported as an independent property by the Metropolitan, they were so treated and valued by the board.

Q. Did the board personally view the various lines with respect to which reports were made by the Metropolitan Street Railway Company?

A. I never viewed it all personally.

Q. Did any other member of the board, so far as you know?

A. Not to my knowledge.

Q. Did the board, in valuing the various franchises of the various companies, take into consideration, among other matters, the market value of their securities; that is to say, their stocks and bonds?

A. Yes, sir; the market value of those securities, the capital stock and the bonds, were considered as they were reported in the *Financial Chronicle* of January 7, 1900.

Q. Were these various figures aggregated together so that you had before you at that time a sum total representing the market value of all the securities, stocks and bonds of the system?

A. Yes, sir, they were so aggregated.

Q. This market value was a figure that exceeded $100,000,000 in amount, was it not?

A. Considerably more, if my recollection serves me.

Q. Do you recall what the figure was?

A. Yes, sir; it was, in my recollection, it was somewhere between $150,000,000 and $160,000,000.

Q. Was this regarded by the board as an appreciating or a depreciating element in making their assessments upon the various several franchises?

A. If I may be permitted to say, it was simply taken for what it might be worth; it wasn't accepted as conclusive or as an absolute measure of value.

Q. But it was accepted as showing that they, that is, the

235 special franchises, were very valuable, was it not?

A. Yes; we took it as an element, a factor, for what it was worth.

Q. Did the board at this time, when you had this figure before you, make any deduction from the total referred to as amounting to $150,000,000 or $160,000,000, starting with that as representing the value?

The REFEREE: He has not said he started with that as a basis.

A. I didn't state that; I stated that we took that as one of the elements for consideration.

Q. Did you at any time in making these special franchise valuations start with that as a basis?

A. No; it was given consideration; I can't say it was a ground or a basis, but it was considered among the other elements.

Q. What other elements were considered by the board at this time in connection with the market value?

A. The earning power of this property as reported to us by the company.

Q. When you say the earning power do you mean the earning power of the system which had stocks and bonds aggregating a market value of $160,000,000?

A. Yes; or where they were separately reported to us in their report of June 30, as they were in several instances, they were separately considered.

Q. But unless they were separately reported you did not consider, did you, the earnings from each separate franchise by itself?

A. No.

Q. What other elements did you have before you in making your assessments and valuations?

A. We had first the report of the corporation, the original report, to which there were subsequently supplemental or special reports, as we called them. We availed ourselves of the State railroad commissioners' reports, the records of the State comptroller's office;
236 we had the reports of New York city department of assessment and taxation. We had the information of the experts retained by our board on behalf of the State, and of our confidential appraiser and special agent; we had Poor's Manual; we had the *Financial Chronicle*.

Q. Did your board call for any information with respect to each specially granted franchise owned by each company?

A. I don't recall now; we had some correspondence with your company. The records would show; that would be included in the return.

Q. The reports—namely, the principal report, containing questions requiring information, and the two supplemental reports—contained all the statistics which were asked for by the board of the various companies?

A. No, I think there was a letter also; I am not sure; perhaps not in this company's case.

Q. You have given us the various matters which you considered in arriving at your assessment; did you, in connection with other matters and other information which was laid before you, consider the opinion of Mr. Fiero, submitted to the State Board of Tax Commissioners September 28th, 1899?

A. We did; yes, sir.

Q. In making your assessments were you governed, or was the board governed, by the principles which are laid down as proper principles to be applied to the matter in hand by Mr. Fiero in this opinion?

Objected to as incompetent.

Objection sustained. Exception.

Q. I show you a document entitled "Assessment of special franchises," submitted to State Board of Tax Commissioners September 28th, 1899. Is this paper one of the papers which was be-
237 fore the board in making its valuations and in fixing the assessments of the various railroad companies?

Objected to as immaterial.
Objection sustained. Exception.

Q. Having before you the documents and papers and information to which you have referred, will you please state the method which was applied by the board in arriving at the several assessments?

Objected to on the ground that the evidence is not competent under the decision of the appellate division, and on the same grounds as before.
Objection overruled. Exception.

A. If you mean by method the rule, a fixed rule, there was none applied. Each property was treated individually, and upon its own conditions.

Q. Selecting, now, the Metropolitan Street Railway Company, the map of which is now placed before you, will you please state what method was adopted by the board in fixing the assessment of the Metropolitan Street Railway Company at $18,377,911?

Same objection, ruling and exception.

A. All of the elements, factors and considerations which we had been enabled to gather were considered by the three commissioners and their minds seldom met at the beginning. This valuation was the result of very much discussion, as were most of the other important—— I cannot tell you what was in the minds of the other commissioners, nor, indeed, after making each year some five thousand valuations upon these franchises, can I tell you even vaguely what passed through my own mind at the time of the making of this particular one, but undoubtedly the report of the company was made the basis.

Q. Was there any rule adopted in the case of this com-
238 pany? You have stated, as I understood you, that the rule varied with the different companies. But was there any rule or principle adopted by the board in making this assessment of the Metropolitan Street Railway Company?

Same objection, ruling and exception.

A. No, sir; there was no fixed rule.
Q. Did you arrive at this result as being a fair value without the application of any specific rule?
A. Yes; the board as a whole agreed that was a fair valuation.
Q. Did you consider, in fixing your valuations, the rules or principles applied for assessing franchises in other States?

Objected to as too indefinite and general.
Objection sustained. Exception.

Q. Are you able to state, with respect to this particular assessment, whether or not this assessment was arrived at without any examination by the board of the lines operated by this particular company—that is to say, the lines which are assessed at $18,000,000?
A. Do you mean by personal visitation to the property?
Q. Yes, by the board or any member?
A. The board did not, or any member, to my knowledge, personally visit the line.
Q. Did you arrive, or in making these various assessments, deduct from the amount before the board the funded or bonded indebtedness of the various companies?
A. No, sir; we did not.
Q. Was no deduction made in the case of any company which was assessed by you, or was no deduction made from the proposed assessment of any company which was assessed by you for its amount of funded or bonded debt?
A. No, sir; we considered that as an element of value, if considered at all.

Q. Did the board take into consideration the tax rate fixed
239 upon real estate in the several counties in which these various companies' lines are located?

A. It did.
Q. Will you state in what way they took into consideration the tax rate?
A. It was considered; I can't tell you in just what way.
Q. Take the Metropolitan Street Railway Co., which is located in New York county; did you take into consideration the tax rate in New York county?
A. Yes, sir.
Q. What use did you make of the tax rate which prevails in New York county in arriving at this assessment?
A. It was one of the questions submitted in the blank printed report to which answer was made, and like the answer to all the interrogatories in this blank it was considered one of the elements in this case.
Q. Will you now state in what way you valued the tangible property connected with the use of the special franchise owned by this company?

Same objection.
Objection overruled. Exception.

A. The value of the tangible property was reported to us by the company, and it was also valued by our experts and appraisers.
Q. You made no personal valuation of it as a board?
A. We didn't personally visit it and fix a value.
Q. Are you able to state whether or not the valuation which was placed upon this property, I refer now to the tangible property, was

based upon the cost of reproduction or replacement of the tangible property connected with each special franchise?

A. Yes, it was based upon what we termed the present value or the value of the property at that time. Perhaps I should say in explanation that although these reports were of a date as of June 30, 1899, these valuations found by us should be considered as of
240 the date of January 7th, 1900. These New York County valuations and the tangible was considered of the value at that time.

Q. Was this valuation based solely upon the cost of reproduction, so far as you recall it?

A. Yes, cost of reproduction. This present value, with an allowance for depreciation in the property, the age being stated, &c.

Q. Have you any figures—has the board any figures—which show the amount at which the tangible property connected with each special franchise was valued?

A. I think not, except the report of the company.

Q. So that in making these assessments against each company, as I understand you, you fixed a certain figure as covering the value of the tangible and the intangible property together?

A. Yes, sir.

Q. And no rule or principle, or general principle, was adopted in the making of these various valuations?

A. There was no fixed rule.

Q. Were the net earning- of the companies taken into consideration by the board in fixing these assessments?

A. Both the net earnings and the gross earnings.

Q. If the net earnings were large, the assessment was correspondingly increased as compared with a company the earnings of which were less?

A. I think I may say yes, because they would measure the earning power of the special franchise.

Q. Then the earning power of the franchise was primarily the consideration which the board adopted in fixing its several assessments?

A. I will answer by saying it was a very important factor in the minds of the board.

Q. Was there any factor more important or more controlling than that, except the market value of its stock and bonds?

241 A. No, I think there was no element more influencing the board than the earning power.

Q. As I understand you, the board adopted the rule of considering the earning power and the market value of the stock and the bonds of the several companies as the most important considerations of an appreciative character in fixing the assessments of the various companies?

Objected to as not fairly stating what the witness has said.

A. If you will say "important elements," I will answer in the affirmative.

Were they not, in point of fact, more important than any other elements, as considered by the board, in fixing its assessment?

A. In this case of a road being actually operated, I should say they were two very important elements; but there were cases in which we found franchise valuations where there were no earnings, and very slight showing of market value for securities. So I can't answer generally.

Q. I do not ask you generally, but I now refer to the companies composing the Metropolitan Street Railway Company system and the other companies in the city of New York?

A. They were two very important factors in the consideration given the properties by this board.

Q. Were there any other factors of equal importance in arriving at the value of these various special franchises on the part of the board?

A. Not that I now recall.

Q. In assessing these various special franchises did you consider that a surface railway which had changed its motive power from horse power to underground electrical power was more valuable after the motive power had been changed than it was before the motive power was changed?

A. Yes, that would be evidenced in the receipts.

242 Q. Do you make the same answer in case of horse railways which had been changed to cable or which had been changed to the overhead trolley system of electricity?

A. I think my former answer would cover that, that it would be measured by the earning capacity, and certainly whether cable or electric road would certainly have greater earning power than if it had only horses as motors.

Q. Did you in case of any companies of the Metropolitan system or any company in the city of New York take into consideration the percentages in the nature of a tax which were already being paid by the companies to the cities?

A. Yes, they were reported to us and were considered as a part of the report made to us.

Q. Were they capitalized in any case to show what the value of the property was that could pay taxes to that amount?

A. No, I don't think they were, because it was immaterial, because from the tax based upon any valuation which we might find those burdens would be deducted.

Q. Did you not consider in case of the Broadway Surface Company, the Broadway and Seventh Avenue Company, did you not consider the fact that it had agreed and had paid to the city $150,000 a year as license fee or tax to the city, a fact indicating or a fact bearing upon the large value of that franchise?

A. Yes, sir, we did give weight to that fact.

Q. So that in all cases where a company had agreed to pay a heavy percentage to the city of its gross receipts and had paid those percentages to the city, that was taken into account as indicating that that particular franchise was valuable?

A. Yes, sir, that is true.

Q. Valuable in proportion as it had agreed to pay to the city a greater or less percentage of its gross receipts?

243 A. Yes, sir. You may go further and say we applied the same gauge to the list made of the Madison Avenue line, the Fourth Avenue line.

Q. Will you kindly explain what you have in mind?

A. That is in line with the questions which you have just been putting.

Q. My question; will you kindly go a little further into that line and explain it?

A. Certainly, if you wish it.

Q. If you will?

A. It is my recollection that the 17 miles of road was leased by the Metropolitan system of the Harlem; that it was to pay something like $360,000 a year for eight years; thereafter I think something like $400,000, and that was taken somewhat as the measure of the value of that franchise, it being a franchise pure and simple, it previously having been a horse road and converted to an electric road.

Q. The greater the sum agreed to be paid under the lease in such a case as that the larger the assessment, which, in the judgment of the board, was placed upon the line covered by the lease?

A. Yes, sir.

Q. The various valuations of the various franchises are in irregular figures; that is to say, they are not in hardly any case round figures; is that due to the fact that any special system was applied?

A. No, sir; it represented the fact that we had difficulty in arriving at that sum.

Q. Was the amount of money agreed to be paid by the Harlem Company under this lease the most important factor as regarded by the board in fixing this assessment upon this line?

A. I think it was a great aid to the judgment of the board in arriving at a valuation of that particular line.

Q. In cases where there was a lease of a line, as in that case, did the board pay any special attention to the gross earnings of

244 that particular road as distinguished from the amount of money that had been agreed to be paid under the lease?

A. To which did it attach most importance?

Q. Yes, in case of that road; was it not the fact that the value of the lease, or the amount of money agreed to be paid under the lease, was the controlling consideration in assessing that particular franchise?

Objected to as incompetent.

Objection sustained. Exception.

Q. You have stated in one of your prior answers that you had great difficulty in arriving at a valuation of these various franchises; will you state from what considerations the difficulty arose?

A. The difficulty arose from making the minds of the three commissioners meet.

Q. Did you find any difficulty in the subject with which you had to deal, namely, the valuing of a special franchise of an intangible character?

A. No; I think the same difficulty would have arisen on the tangible possibly, the difficulty of making three pretty firm minds meet.

Q. Did the board take into consideration, in arriving at the value of these special franchises, the entire value of the corporate assets of the company?

A. Yes, sir; they were considered.

Q. Were they considered as an appreciating factor where they were large in amount?

A. Yes, sir.

Q. Did you deduct the indebtedness of the corporation in any case for the purpose of arriving at the value of its taxable assets?

A. If there were bills payable they would be considered, of course.

Q. Did you take into consideration for any purpose in valuing these special franchises the power-houses and real estate off the line of the road?

A. Yes, sir.

Q. Where the company had or owned a large power-house,
245 was that regarded as evidence of the fact that the special franchise of that company was more valuable than the case where a company had no power-house?

A. No; it was not considered for that purpose.

Q. For what purpose was it considered?

A. As showing the total assets of a corporation property outside the street and property in the street.

By the REFEREE:

Q. Do I understand you to mean that it was considered as part of the tangible property?

A. Well, not for the purpose of our valuation, because we had to value only that tangible property which was in the street, together with the right to have and use it there. But it would be represented in the total assets of the company; the property outside of the street, of course, would be included in the capitalization of the company as well as its personal and other property.

By Mr. PAGE:

Q. At the time the first assessment was made in the case of these various companies the Third Avenue Railroad Company was in financial difficulty, was it not?

A. I think so; yes, sir.

Q. The Metropolitan Street Railway Company, as indicated by its return, was in a highly prosperous condition, was it not?

A. Yes, sir; I think so.

Q. Did the board in fixing the value of the special franchises of

the Third Avenue Company take into consideration the fact that the company at that time was in financial difficulties, and that its earnings were comparatively small?

A. It did; yes, sir.

Q. So this circumstance, to wit, the financial difficulties in which the Third Avenue Railway Company was then in, was this a consideration which operated in depreciation of the amount

246 which was fixed by the board upon its special franchises?

A. Yes, sir; I think a lesser valuation was fixed than would have been under more favorable conditions.

Q. The Metropolitan Street Railway Company operated its system by transfers at various points of intersection with the lines of other companies, was this fact regarded as a circumstance which enhanced the value of the property generally?

A. It was considered as a factor, its transfers.

Q. Of an appreciative character in the fixing of the assessment?

A. If it increased its business that would be evidenced in its receipts.

Q. This consideration took place whether or not the transfer was between lines owned by the same company or between lines owned by different companies, so long as they were operated as a part of the general system?

A. Yes, sir.

Q. Is what you have said now with respect to the Metropolitan Company and the transfer situation equally true with respect to the other street railway companies in the city of New York?

A. It is; yes, sir.

Q. Before the lease the Harlem line was operated as one company and gave no transfers; since the lease it has been operated as a part of the Metropolitan Company system and cars have been run continuously over its lines and over other portions of the Metropolitan Company system. Was the circumstance that the business of the Harlem line has increased under the new arrangement one which, in the judgment of the board, increased the value of that special franchise?

A. The latent value of the franchise may have been there all the time, but it is certainly being better developed under present management than theretofore.

247 Q. The new management was taken into consideration in fixing the assessment upon the Madison Avenue line, was it not?

A. The measure of the valuation found by the board upon that franchise was largely the measure fixed by the Metropolitan system itself in that sum which it paid for it in rentals.

Q. Didn't the fact, that after the lease it was operated by the Metropolitan Street Railway Company add, in the judgment of the board, to the value of that special franchise?

A. Yes, sir, I think it did.

Q. Is it not a fact that these various special franchises, when this subject came up for consideration before the board, that the special

franchises operated by each company which was assessed were regarded as parts of an undivided system operated as a whole?

A. As parts of a whole they were so considered; yes, sir.

Q. Is it not a fact that the board in arriving at these various assessments, from the want of any general rule which would apply in all cases, did, in each special case assess the special franchise against the company owning the same at what the board thought was fair?

A. Yes.

Q. Isn't it the fact that the board was unable to devise or find any general rule or principle to adopt in making these various assessments?

A. That is true.

Q. Isn't it the fact that the board was in the nature of things constrained in most cases to conjecture what it thought would be the fair value of these special franchises, of taking into consideration those matters which you have heretofore mentioned?

A. I think all assessment is far from an exact science. I am not willing to answer these mere guesses or conjectures.

Q. Was there a special method which you found you
248 could apply and with which you could figure out the assessment in any particular case?

A. If you mean by that a rule such as taking any certain percentage of gross or net receipts, no. It would make large and valuable franchises pay ridiculously small taxes. It would crush out the smaller franchises throughout the State.

Q. For that reason you did not apply that rule?

A. We did not apply that rule.

(Mr. HILL:)

Q. Did not apply any general principle?

A. Any general rule.

Plaintiff's counsel, Mr. Page, offered in evidence the document marked for identification this day, the report of the State Board of Tax Commissioners of the State of New York, dated January 25, 1901.

Objected to upon all the grounds heretofore stated to the reception of the table of valuations, and as irrelevant.

Plaintiff's counsel, Mr. Page, offered in evidence the first twenty-nine pages, being the portion from which particulars have been read.

Same objection. Sustained. Exception.

Q. In valuing the property here in the State of New York, was any consideration given by the board to the question of whether or not the assessment under the special franchise law against railroad companies in New York city was unequal or not as compared with other real estate in the city of New York not constituting special franchises?

A. I don't understand the question.

Q. You have returned all these special franchises assessed at full value, have you not?

A. That was our intention at the time of making the valuation.

Q. Your return was correct in that particular; you have returned — you assessed these special franchises at their full value?

A. It was our intention of doing it at the time of making the valuation, making a full, fair value.

249 Q. You signed this report, did you not, that was made to the legislature this year, dated January, 1901?

A. I did; yes, sir.

Q. This report contains this statement:

"The law should authorize and direct this board to equalize, after hearing, special franchise valuations found by it to conform with the local assessment of other real estate in the tax district where special franchises exist, upon such proofs and information as the board can obtain.

"Such authorization will afford the warrant of law for supplying a remedy in the first instance to corporations. The corporations are now compelled in every case, involving great or small amounts, to resort to a court proceeding for a reduction which this department may be willing to admit is equitable; but is not by the law, in its present reading, permitted to make."

You recall that statement, do you not?

Objected to as incompetent.

Objection sustained. Exception.

Q. You are familiar, are you not, with tax matters generally through the State? You have no other business that engrosses your time?

A. No, sir; I surrendered all other business save this for the last two years and a half.

Q. Your time for the last two years and a half——

A. (Interrupting.) Has been exclusively devoted to this business.

Q. You have investigated the tax rates in the various counties of the State?

A. I have; yes, sir.

Q. You are familiar with the ratio which prevails between actual value and assessed value in various counties of the State?

A. I have aided in fixing such percentages, the tables for the last two years.

Q. This fixing of percentages, to which you refer, proceeds
250 upon the ground, does it not, that the actual value of the property in the various counties differs from the assessed values?

A. That is true.

Q. Is that the fact?

A. It is the fact.

Q. Is it the fact in the city of New York that the actual value differs from the assessed value?

A. We so find, officially.

Q. In your judgment, I mean as a tax expert spending all your time in the investigation of matters and statistics relating to taxes throughout the State?

A. In my judgment, they are not assessing property in New York city or New York county at its full, fair, actual value of full one hundred per cent.

Q. Have you ascertained by investigation the real and assessed values of property in the city of New York?

A. Yes.

Q. What was the relation in the year 1900 between assessed value and the actual value of real property in the county of New York?

Same objection.

Objection overruled. Exception.

A. In my judgment it was 67 per cent. of full, fair, actual value. I am speaking of the real value. Real estate was assessed at 67 per cent. of its full, fair value. This finding is based upon the assessment rolls of 1899.

It is conceded that the testimony given by Mr. Priest as to the relation between the value of assessed property and the actual value of real property in the city of New York as 67 per cent. covers the year which these certiorari proceedings are to review the assessment of.

Q. I have understood from you that in case of the tangible property connected with special franchises you endeavored to apply
251 the rule that the cost of reproduction was the measure of value. Am I correct in that?

The REFEREE: He answered the question in this way: The cost of reproduction, taking into account depreciation.

The WITNESS: That was my answer.

Q. This was a general rule applied in all cases, was it not?

A. Yes, sir.

By Mr. PAGE:

Q. When you have said in your previous testimony that you took into consideration various matters which had been referred to, you mean the board?

A. I mean the board.

Q. When you say you took into consideration the earning capacity of a particular railroad you mean, as I understand you, that the earning capacity figured as an element or factor in the final assessment of each company as fixed by the board?

A. That is true.

Q. Is that true in case of all the street railway companies whose proceedings are under review?

A. That is true.

Q. Is the same true of the corporate assets, the market value of

stock and bonds and other matters which you have mentioned in your testimony as matters taken into consideration?

A. That is true.

Q. Namely, that they were all figured as factors in the final assessment?

A. They were all considered.

Q. And were appreciating factors in the assessment as finally fixed?

A. Yes.

Q. The lease of the Harlem Railroad Company to the Metropolitan provides for a rental of $365,000 a year, that capitalized on a ratio of 20 to 1 makes approximately the sum of $7,000,000; your first tentative assessment, I refer now to the tentative assess-
252 ment fixed by the board, was $7,702,000; is it not the fact that in fixing this tentative valuation and the final valuation, which is $6,405,000, that the rental from this lease capitalized was the primary consideration in fixing the assessment?

A. It certainly was a very important element; I can't say that it was the only one.

Q. In this particular case, did not the board capitalize the value of this particular lease in that manner capitalize the rent amounting to $365,000?

A. That was considered—I can't say that was the sole measure of the value fixed.

Q. The capitalizing process, the capitalizing method, was adopted in fixing that assessment value as one of the factors?

A. We considered the rental value fixed by the lessee company, certainly.

Q. You capitalized, did you not, also, in considering the various matters relating to that railway company?

A. I have no distinct recollection of having capitalized it myself.

Q. Wasn't the capitalized value of this lease a matter that was considered by the board?

A. That is true.

Q. It was one of the factors which entered in the assessment as finally completed?

A. That is true.

Q. Is this true of other lines of the Metropolitan system which is the subject of lease by one company to another?

A. Yes, sir, I think it is.

Q. The papers show that the 23d Street Railway Company when that special franchise was originally granted by the legislature was put up at auction and sold, and the price obtained for the same was $150,000; do you remember whether or not that figure, namely, the price obtained at that sale for this special franchise, was considered by the board as an element or factor in fixing the assess-
253 ment of that company?

A. I think it was considered; yes, sir, we had the fact before us.

Q. You had the fact before you?

A. Yes, sir.

Q. Referring to your statement that you followed no fixed rule in valuing the intangible franchises of the various companies, have you covered all the elements which were taken into consideration by the board? In other words, is your enumeration, so far as you recall it, complete?

A. I think so; yes.

Q. You have stated that you took into consideration both the net and the gross earnings as appreciating factors in valuing these franchises of the Metropolitan Street Railway Company, by you I refer to the board, did you take into consideration the profits from the operation of the Metropolitan system as an appreciating factor in the valuing or fixing the final assessment of the various special franchises?

A. Yes, sir, it was considered.

Q. Is it not the fact that no specific oath was taken either by you or by the experts of the board who made valuations and gave information to the board?

A. In each instance, do you mean?

Q. Yes?

A. Simply the certificate of valuation made by the three commissioners; that is all, or by the secretary for them.

Q. No oath was administered to the individual making those certificates?

A. The certificates were issued by our secretary by our order; he is a sworn officer and each one of the commissioners is a sworn officer.

Q. This certificate is the only verification which there was in respect to those statements?

A. That is true.

It is *stipulated* that the testimony of Mr. Stearns and of Mr. Leaycraft, the other commissioners of the board, who have been
254 present at this hearing at which the testimony of Mr. Priest has been given, is deemed to be given by those gentlemen as witnesses in this proceeding and that their testimony is and is to be deemed to the same effect and to be of the same tenor as the testimony of Mr. Priest, subject to the same objections and the same exceptions as taken to the testimony of Mr. Priest.

Mr. PAGE: In making this stipulation we do not mean to regard it as waiving the right to call Mr. Priest again if necessary.

Adjourned to Wednesday, July 3, 1901, 10 a. m.

ALBANY, N. Y., WEDNESDAY, *July* 3, 1901.

The parties met pursuant to adjournment.

Mr. PAGE: I desire to offer in evidence the leases of the New York and Harlem Company; the Eighth Avenue Company and the other companies of the system of the Metropolitan Street Railway Company and of the Central Crosstown Railroad system. In lieu of offering the entire documents in evidence I will present a statement

showing the date of the lease, the parties to the lease, the term of the lease, the amount of rental, the obligations assumed by the lessee company and the property conveyed.

The following is a copy of the statement:

255 (1.) *Bleecker Street & Fulton Ferry Railroad Company Lease.*

(*a.*) Lessee: Twenty-third Street Railway Company.

(*b.*) Dated: January 10, 1876.

(*c.*) Term: 99 years from January 10, 1876.

(*d.*) Rental: Lessee to pay dividends on the stock at the rate of one and one-half per cent. per annum on $900,000 par value stock of lessor, and also interest on $700,000 par value first mortgage bonds at seven per cent. per annum, now reduced to four per cent. per annum, besides to pay taxes, license fees and assessment.

(*e.*) Demises: Franchises and property.

(*f.*) Property demised, exclusive of franchises, includes, viz:

All the real estate of lessor company, except its depot and stable grounds and premises held under lease from the mayor, aldermen and commonalty of the city of New York, and the buildings thereof.

Also all rolling stock, including cars, horses, harness, tools and implements used in operation of road, together with equipment of depots and stables, contracts for the transfer of passengers with other companies and contracts for the use of tracks of other companies.

256 (2.) *Broadway & Seventh Avenue Railroad Company Lease.*

(*a.*) Lessee: Houston, West Street & Pavonia Ferry Railroad Company, consolidated December 12, 1893, into the Metropolitan Street Railway Company.

(*b.*) Dated: May 10, 1890, and filed in the office of the secretary of state June 14, 1890.

(*c.*) Term: 1,000 years from May 26, 1864.

(*d.*) Rental: The lessor agreed to pay interest on the bonded debt, which was $2,000,000, since increased to $14,500,000, and ten per cent. annually on the par value of the stock, amounting to $2,100,000. Lessee also to pay taxes, license fees and assessments.

(*e.*) Demises: Franchises and property.

(*f.*) Property demised, exclusive of franchises, includes, viz:

The Cable building, at 621 Broadway; depot, consisting of depot property on the block bounded by 50th and 51st streets, Sixth avenue and Seventh avenue, New York.

Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables; contracts for the transfer of passengers with other companies and contracts for use of tracks of other companies.

257 (3.) *Central Park, North and East River Railroad Company Lease.*

(*a.*) Lessee: Metropolitan Crosstown Railroad Company. (Consolidated into the Metropolitan Street Railway Company.)

(*b.*) Dated: Filed in the office of the secretary of state, November 19, 1892. Articles filed May 28, 1894. The Central Park Company was organized July 19, 1860.

(*c.*) Term: The duration of the lessor company's charter, viz: in perpetuity.

(*d.*) Rental: Eight per cent. per annum on 18,000 shares at $100 each, commencing October 1st, 1892, for five years, and thereafter an annual rental of nine per cent. per annum, in quarterly installments, also the interest on bonded debt of $1,200,000 at 7 per cent. Lessee also to pay taxes, license fees and assessments.

(*e.*) Demises: Franchises and property.

(*f.*) Property demised, exclusive of franchises, includes, viz:

Real estate between 53d and 54th streets facing on the west side of Tenth avenue, running back 475 feet, covering three-quarters of the block.

Also all rolling stock, including cars, horses, harness, tools and implements used in operation of road, together with equipment of depots and stables, contracts for the transfer of passengers with other companies and contracts for use of tracks of other companies.

258 (4.) *Christopher and Tenth Street Railroad Company Lease.*

(*a.*) Lessee: Central Crosstown Railroad Company.

(*b.*) Dated: April 26, 1890, and filed in the office of the secretary of state on May 28, 1890.

(*c.*) Term: 1,000 years from Aug. 6, 1873.

(*d.*) Rental: 8 per cent. per annum on the par value of the capital stock of $650,000 of the lessor. Lessee to pay taxes, license fees and assessments, and also to pay the Christopher and Tenth Street Railroad Company the interest on bonded debt of $210,000 at 4 per cent.

(*e.*) Demises: Franchises and property.

(*f.*) Property demised, exclusive of franchises, includes, viz:

Lots and depot property on south side of Christopher street, being 130 feet in front.

Also all rolling stock, including cars, horses, harness, tools and implements used in operation of road, together with equipment of depots and stables, contracts for the transfer of passengers with other companies and contracts for use of tracks of other companies.

The foregoing lease pertains to the Central Crosstown system. All the other leases, Nos. 1 to 3 and 5 to 11 inclusive belong to the Metropolitan system.

259 (5.) *Eighth Avenue Railroad Company Lease.*

(*a.*) Lessee: Metropolitan Street Railway Company.
(*b.*) Dated: November 23, 1895; filed in the office of the secretary of state December 28, 1895.
(*c.*) Term: 99 years from January 1st, 1896.
(*d.*) Rental: $215,000 per annum. Lessee also to pay taxes, license fees and assessments.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, includes, viz.:
Building at No. 64 Vesey street, 25 x 100 feet, 37 lots of land, bounded on and fronting on the west side of Eighth avenue, southerly by 49th street and northerly by 50th street. Also lot of land on the easterly side of Eighth avenue, bounded in front by the same, 105 feet deep and 100 feet front, on the southeast corner of 50th street, consisting of seven lots. Also property situated on Eighth avenue between 151st and 152d streets, Eighth avenue and McComb's Dam road.
Also all rolling stock, including, cars, horses, harness, tools and implements used in operation of road, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies.

260 (6.) *Forty-second Street and Grand Street Ferry Railroad Company Lease.*

(*a.*) Lessee: Metropolitan Crosstown Railway Company (consolidated May 28th, 1894, into Metropolitan Street Railway Company).
(*b.*) Dated: April 6, 1893, and filed in the office of the secretary of state of New York on May 13, 1893.
(*c.*) Term: Length of charter, which was for 1,000 years from February 16, 1863.
(*d.*) Rental: 18 per cent. per annum on the par value of stock of lessor, amounting to $748,000. Lessee to pay taxes, license fees and assessments, and also the interest on bonded debt of $236,000 at 6 per cent.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, includes, viz:
Building and lot on north side of 42d street, running 200 feet east from Hudson river and 235 feet on 43d street, and 200 feet deep.
Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for the use of tracts of other companies and leases of other railroad companies.

261 (7.) *New York & Harlem Railroad Company City Line Lease.*

(*a.*) Lessee: Metropolitan Street Railway Company.
(*b.*) Dated: June 11, 1896, and filed in the office of the secretary of the State on July 16, 1896.
(*c.*) Term: 999 years from July 1, 1896.
(*d.*) Rental: $350,000 per annum for five years of the term, and thereafter $400,000 in quarterly installments on the 26th day of December, 1896, and subsequent thereto, besides taxes, assessments, license fees and percentages.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, includes, viz.:
Lease for a term of three years of depots, stables, car houses, repair shops and other buildings, situated on Fourth avenue, between Thirty-second and Thirty-third streets in the city of New York, extending 197 feet on Fourth avenue, 425 feet east on Thirty-second and Thirty-third streets, and 147 feet on Lexington avenue, also the depots, stables, car houses, repair shops and buildings on Madison avenue, between 85th and 86th streets, extending 204 feet on the westerly side of Madison avenue, and extending 220 feet on Eighty-fifth and Eighty-sixth streets.
Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies and leases of other railroad companies.

262 (8.) *Ninth Avenue Railroad Company Lease.*

(*a.*) Lessee: Houston, West Street and Pavonia Ferry Railroad Company. Consolidated December 12, 1893, into Metropolitan Street Railway Company.
(*b.*) Dated: March 12, 1892, and filed in the secretary of state's office April 20, 1892.
(*c.*) Term: 99 years from March 12, 1892.
(*d.*) Rental: $48,000 per annum, equal to six per cent. of the capital stock of the Ninth Avenue Company for five years, which expired. This rental expired in January, 1893, and thereafter the lessee paid an annual rental of $64,000, equal to eight per cent. on $800,000 capital stock. Lessee also to pay taxes, license fees and assessments.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, includes, viz.:
All the lands, tenements, easements, fixtures and appurtenances of the lessor company.
Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies.

263 (9.) *Second Avenue Railroad Company Lease.*

(*a.*) Lessee: Metropolitan Street Railway Company.
(*b.*) Dated: January 28th, 1898.
(*c.*) Term: The duration of charter of the Second Avenue railroad and any renewals thereof. The Second Avenue Railroad Company was organized January 21, 1853, for 99 years.
(*d.*) Rental: The lessee agreed to pay 8 per cent. per annum on 18,620 shares of the capital stock for three years, commencing March 1, 1898, and 9 per cent. thereon for the remainder of the term and the renewals, also to pay taxes, license fees and assessments.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, included, viz.:
Lot and building bounded south by 96th street; north by 97th street; east by First avenue, and west by Second avenue. Also a parcel at the southwest corner of 127th street and Second avenue, 50 feet front on Second avenue, and 100 feet or thereabouts in depth.
Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies.

264 (10.) *Sixth Avenue Railroad Company Lease.*

(*a.*) Lessee: Houston, West Street and Pavonia Ferry Railroad Company, consolidated December 12, 1893, into Metropolitan Street Railway Company.
(*b.*) Dated: February 1, 1892, and filed April 12, 1892, in the office of the secretary of state.
(*c.*) Term: 800 years.
(*d.*) Rental: $145,000 per year in quarterly installments. Lessee also to pay taxes, license fees and assessments.
(*e.*) Demises: Franchises and property.
(*f.*) Property demised, exclusive of franchises, includes, viz.:—Certain small pieces of real estate for limited terms which have now expired.
Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies.

265 (11.) *Twenty Third Street Railway Company Lease.*

(*a.*) Lessee: Houston, West Street and Pavonia Ferry Railroad Company. (Consolidated December 13, 1893, into the Metropolitan Street Railway Company.)
(*b.*) Dated: April 25th, 1893, and filed in the office of the secretary of state on June 7th, 1893.

(c.) Term: 1,000 years from June 29, 1872, as extended by renewals of charter.

(d.) Rental: 18 per cent. per annum on $600,000 par value capital stock and interest on bonded debt $250,000 at 6 per cent. and $150,000 at 5 per cent. Lessee also to pay taxes, license fees and assessments.

(e.) Demises: Franchises and property.

(f.) Property demised exclusive of franchises, includes:

Leasehold rights for property on block bounded by 23d, 24th streets and Eleventh and Thirteenth avenues on which the company's depot is constructed, on West 23d street. Lot and depot property at south side of 34th street, between First avenue and East river.

Also all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers with other companies, and contracts for use of tracks of other companies.

266 JAMES L. WELLS, sworn for the plaintiff in all the cases, testified:

Examined by Mr. PAGE:

Q. What is your business?

A. Real estate

Q. How long have you been in the real estate business?

A. Over 25 years.

Q. What has been the character of the real estate business which you have done during that time?

A. I have bought and sold; I have sold very largely at public sales and I have made many appraisements of property in all parts of the city. I confine my attention to the city of New York, particularly the boroughs of Manhattan and Bronx.

Q. Will you state more particularly the scope of your experience in the matter of appraising properties, what classes of property you have appraised and for what institutions?

A. I have appraised pretty much all kinds of property where testimony was required or where evidence was desired in the purchase or sale of property or not, or loaning upon bonds and mortgages; I have appraised for banks and bankers, fire and life insurance companies, public institutions, title companies and estates. I think those embrace them.

Q. Have you held any official position at any time in connection with the tax department in the city of New York?

A. Yes, sir.

Q. Will you state what position you have held and when?

A. I have been a tax commissioner of the city of New York.

Q. For what period?

A. I was appointed in June, 1895, and I was legislated out of office on the first of January, 1898, by the charter for Greater New York.

Q. When you were a tax commissioner did you continue at the same time your personal business of appraising and buying and selling property?

267 A. I did; I have continued that business for over 25 years.

Q. In the course of the time when you were in office were you familiar with the assessments which were made against real property in the city of New York?

A. I was.

Q. Were you familiar with the real property against which those assessments were made in the city of New York?

A. Very much of it.

Q. Are you acquainted with the assessed values in the city of New York for the year 1899?

A. Yes, sir.

Q. In the course of that year did you have occasion to examine assessed values of property in connection with the actual value of property?

A. I have made such examinations quite frequently during that year.

Q. Are you able to state the relation between assessed value and actual value in case of real property in the city of New York for the year 1899?

Objected to upon the ground that it is not a proper method of proving valuation or percentage, and the witness is not competent to state in a general way. This is a conclusion called for and not a statement of fact.

Objection overruled. Exception.

A. Yes, sir.

Q. What was the relation between assessed value and actual value, assuming the actual value to be 100 per cent. in the year 1899 in the city of New York?

Same objection, ruling and exception.

A. In my opinion it was approximately 67 per cent.

Mr. FIERO: I move to strike out the answer, on the ground such statement is too broad and general and not proper or com-

268 petent. That it is a statement of an opinion and not a fact and a statement of an opinion not based upon facts stated by the witness.

Motion denied. Exception.

Cross-examination by Mr. COMAN:

Q. About how many parcels of real estate are there upon the assessment roll in the city of New York?

A. I can't tell you.

Q. About how many were there when you were tax commissioner?

A. I couldn't tell you without referring to the figures.

Q. Isn't it about 240,000?

A. I should imagine there would be as many as that; I had those figures at one time.

Q. Out of that number of assessments, if that be the number, how many parcels are you personally familiar with the value of?

A. I should imagine I appraise in the neighborhood of 2,000 parcels a year in my business and that is scattered over the entire city.

Q. As to parcels of property which you have not appraised have you personal knowledge as to their condition or as to their value?

A. What do you mean as to their condition, their physical condition?

Q. Yes?

A. I know the property generally, the same as any real estate man knows it.

Q. You know the outside of a house, perhaps?

A. I go into the inside of a house when I make an appraisement.

Q. I am speaking of property which you have not appraised?

A. Certainly I don't know the interior of a house I have not been in.

Q. Then you don't know what it is worth?

A. Yes, you get a general idea of what property in a location is worth; it is very easy to ascertain the value of the land and it is very easy to ascertain the size of the house and its height and compute the value.

269 Q. When you come to appraise a house you go through it?

A. When I can go through it I do.

Q. You consider that an essential to an accurate appraisal?

A. Yes; I should want an appraiser to do that if I was going to buy a house.

Q. So that as to the various parts of real estate which you have not appraised and have not personally inspected you don't consider that you know what their value is?

A. Approximately I do know.

Q. But not close enough to make an appraisal of it?

A. Yes, sir, in most cases.

Q. Do you know their assessed value?

A. Not without examining. No man can carry all those things in his mind.

Q. How many parcels of real estate in the city of New York do you know the assessed value of?

A. I don't carry the records around with me; they are public records; when I want to use them I go and use them the same as you use law books.

Mr. FIERO: I now move to strike out the answer of the witness on the ground that it appears that the evidence is not given from personal knowledge, except as to a very small proportion of the property in the city and as incompetent and improper.

The REFEREE: As I understand this witness, as to a large num-

ber of parcels all over the city he knows the actual value and as to a large number of those parcels he knows the assessed values scattered through the city. He says that as to all those parcels the assessed value bears to the real value the relation of 67 per cent. That is the way I understand his evidence. I think that is competent. It is the only practical way to deal with such questions, and, I think, it must be competent, and I refuse to strike it out; otherwise
270 you would have to take 240,000 parcels and go through with each parcel, and that is wholly impracticable.

Defendant excepts.

It is *conceded* that the testimony given by Mr. Wells as to the relation between the value of assessed property and the actual value of real property in the city of New York as 67 per cent. covers the year which these certiorari proceedings are brought to review the assessment of.

Adjourned to Tuesday, July 16, 1901, at 11.30 a. m., at the capitol, in the city of Albany.

ALBANY, N. Y., TUESDAY, *July* 16, 1901.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY and 27 Other Cases
against
THE STATE BOARD OF TAX COMMISSIONERS.

The parties met pursuant to adjournment.

Present the same as before.

Adjourned to Thursday, July 25, 1901, at 11.30 a. m., at the capitol, in the city of Albany.

271 ALBANY, N. Y., THURSDAY, *July* 25, 1901.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY and 27 Others
against
THE STATE BOARD OF TAX COMMISSIONERS.

The parties met pursuant to adjournment.

Present the same as before.

Plaintiff's counsel offered in evidence the report of the Yonkers Railroad Company, made to the State Board of Tax Commissioners, verified October 30, 1899.

Also two supplemental reports subsequently made by the same company, together with the papers connected therewith.

Marked "Plaintiff's Ex. No. 64, July 25, 1901—J. M. R."

Plaintiff's counsel offered in evidence the report of the Tarrytown, White Plains and Mamaroneck Railway Company, verified October 30, 1899, together with the two supplemental reports.

Marked "Plaintiff's Ex. No. 65, July 25, 1901—J. M. R."

It is *stipulated* that the certiorari proceedings referred to in the stipulations or concessions, heretofore made in the prior proceedings

herein, include all the proceedings to review special franchise, assessments and taxes now pending before the referee.

Adjourned to Thursday, August 1, 1901, at 10.30 a. m., at the capitol, in the city of Albany, N. Y.

272 ALBANY, N. Y., THURSDAY, *Aug.* 1, 1901.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Metropolitan Street Railway Company and 27 Other Cases
against
THE STATE BOARD OF TAX COMMISSIONERS. } Continued.

Nothing done.

Adjourned to Friday, August 2, 1901, 10.30 a. m.

ALBANY, N. Y., FRIDAY, *August* 2, 1901.

The parties met pursuant to adjournment.

Present the same as before.

It is *stipulated* that the report and supplemental reports made by the relators to the State Board of Tax Commissioners, and heretofore offered in evidence, were made by direction of said board under section 49 and other provisions of chapter 712 of the Laws of 1899, and upon forms provided by said board and transmitted by it to the relator corporations to be filled out and returned to it. Form of this report and of these supplemental reports is offered in evidence.

Admitted and marked "Ex. No. 66*a*," "Ex. No. 66*b*," "Ex. No. 66*c*."

It is *stipulated* that the verified report and supplemental reports of the Metropolitan Street railway and other companies, marked "Ex. 1 to 60" inclusive, and 64 to 65, are now regarded as before
273 the referee as evidence of what was before the board in making its assessments; this statement to be taken in lieu of and as superseding the former offer in evidence of these exhibits.

Plaintiff's counsel, Mr. Page, offered in evidence a map, showing the special franchises of the Metropolitan Street Railway Company. This map is offered in evidence to supersede a similar map made with less detail, and received in evidence as Metropolitan Exhibit No. 61 (*supra*, p. 197). That exhibit being hereby withdrawn.

Admitted and marked "Metropolitan Exhibit No. 63."

The following is a copy of the memorandum attached to the map:

Metropolitan Street R'y Co.

Special Franchises Owned on Jan'y 8, 1900.

(1.) Broadway Surface R. R. Resolution C. C., Dec. 5, 1884.

(2.) South Ferry R. R. Chap. 508, Laws of 1874.

(3.) Chambers St. & Grand St. Ferry R. R. Resolution of C. C., Dec. 30, 1884.

(4.) Avenue C. R. R. (H. W. & P. F. R. R.). Chap. 625, Laws 1868.

(5.) Avenue C. R. R. (H. W. & P. F. R. R.). Chap. 19, Laws 1871.

(6.) Houston, West St. & Pavonia F. R. R. & Chambers St. & Grand St. F. R. R Resolution of C. C., Oct. 8, 1892.

(7.) Houston, West St. & Pavonia F. R. R. & Chambers St. & Grand St. F. R. R. Resolution of C. C., Oct. 8, 1892.

274 (8.) Houston, West St. & Pavonia F. R. R. Resolution of C. C., Oct. 8, 1892.

(9.) Metropolitan Crosstown R. R. Resolution of C. C., Dec. 31, 1889.

(10.) Metropolitan Crosstown R. R. Resolution of C. C., Oct. 8, 1892.

(11.) Metropolitan Crosstown R. R. Resolution of C. C., Oct. 8, 1892.

(12.) Metropolitan Crosstown R. R. Resolution of C. C., Oct. 8, 1892.

(13.) Lexington Ave. & Pavonia F. R. R. Resolution of C. C., Oct. 8, 1892.

(14.) Columbus & 9th Ave. R. R. Resolution of C. C., Oct. 18, 1892.

(15.) Columbus & Ninth Ave. and Metropolitan St. R. R. Resolution of C. C., Sept. 18, 1894. Franchise of Metropolitan S. R. Co.

(16.) Metropolitan St. R'y Co. Resolution of C. C., April 14, 1896.

(17.) Ninth Ave. R. R. Resolution of C. C., Jan'y 8, 1894.

(18.) Metropolitan S. R. Co. and Columbus & Ninth Ave. R. R. Resolution of C. C., Sept. 18, 1894. Franchise of Col. & 9th Ave. R. R. Co.

(See copy of map, end of testimony.)

The following is a copy of the report and supplemental reports heretofore marked "Ex. No. 66*a*," "Ex. No. 66*b*" and "Ex. No. 66*c*."

275 Pl'ff's Ex. No. 66a, 1899, Rept. to St. Tax Bd.

REPORT

OF THE

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TO THE

STATE BOARD OF TAX COMMISSIONERS

OF THE

STATE OF NEW YORK

FOR THE

YEAR ENDING JUNE 30, 1899.

276 Office of the State Board of Tax Commissioners.

ALBANY, *October 1st*, 1899.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899, a copy of which is enclosed herewith.

It is requested that you complete and forward such report within thirty days, as required by that act.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

Extract from Law Relating to Taxation of Special Franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, in-

cluding the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes or tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. *A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation* shall be subject to a special franchise tax.

277 SCHEDULE A.

Title of company.....
General offices at.....
Date of close of fiscal year.....
For information concerning this report address.....
.....

Officers of the company with address:

President.....
.....
Vice-president.....
.....
Secretary.....
.....
Treasurer.....
.....
General manager.....
.....

278 SCHEDULE B.

Description of special franchise, showing streets, highways, or public places possessed or rights enjoyed and in what village, tax district, or districts same is located and statement of maps accompanying this report.

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This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

279 SCHEDULE C.

Copy of special law, grant, ordinance, or contract or reference to general law under which "special franchise is held, possessed, or enjoyed and statement of any condition, obligation, or burden imposed upon such special franchise, or under which the same is enjoyed."

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SCHEDULE D.

Statement of Assets and Liabilities, June 30, 1899.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements		Capital stock	
Cost of equipment.....		Funded debt	
Stock and bonds of other companies.....		Accounts and bills payable.....	
Material and supplies.....		Interest on funded debt due and accrued..	
Accounts and bills receivable.....		Rentals due and accrued	
Cash on hand.....		Dividends unpaid	
Profit and loss.....		Profit and loss.....	
Total.....		Total.....	

SCHEDULE E.

Capital Stock.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	Amount.	Highest.	Lowest.	Present.
Common issued							
Preferred issued							
Total							

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.

282 *Statement of Receipts and Disbursements for Year Ending June 30, 1899.*

SCHEDULE G.

Receipts.

	Amount.
From actual operation	
Interest and dividends	
Rentals	
Other sources	
Sales of stocks and bonds	
Temporary loans	
Deficit	
Total	

Disbursements.

	Amount.
Salaries of general officers and clerks	
Law expenses	
Other general expenses	
Maintenance and reconstruction or new construction paid from earnings	
Maintenance, reconstruction or new construction paid from other sources	
Rentals	
Interest paid	
Taxes on capital stock and earnings	
Taxes on property in this State	
Taxes on property in other States	
Dividends paid — per cent. common stock	
Dividends paid — per cent. preferred stock	
Surplus	

SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
Total amount of annual rental			

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.	

284

SCHEDULE K.

Statement of Cost, Value on Basis of Reproduction

* Name of tax district wherein located. (Give village, if one, and county.)	Cost of tangible real property included in "special franchise."	Value of tangible real property included in "special franchise" on basis of cost of reproduction.	Cost of real property not included in "special franchise."
Total			

* Name of each tax district in which assessments are made for real estate.

285

And Assessment of Real Estate in Each Tax District.

Value of real property not included in "special franchise" on basis of cost of reproduction.	Last assessment of real property included in "special franchise." *	Last assessment of real property not in connection with "special franchise." *	Give total number of miles of tracks and sidings,—or wires, cables or other conductors,—or of main pipes and number of service pipes—as the case may be, in, upon, under or over streets and highways in each tax district.

* Give facts in this column when such property has been separately assessed.

286 SCHEDULE L.

Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock and All Other Non-taxable Securities Owned.

Description.	Amount.
Total.....	
Value of tangible personal property.....	
Total assessment of personal property.....	

SCHEDULE M.

Details of Roads Owned and Leased.

Name of road.	From	To	Miles owned.	Miles leased.
		Total mileage.....		

This schedule is applicable only to railroad corporations.

288 SCHEDULE N.

Show changes, if any, between June 30, 1899, and October 1, 1899, in real estate or otherwise, affecting the purpose of this report.

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289 & 290 The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, }
County of ——, } *ss.:*

—— —— — of the —— being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1899, as well as of its financial condition and affairs on the said date, and a like true, full and correct statement of the real property of said company on the first day of October, 1899, to the best of my knowledge and belief.

[L. S.]

—— ——.
—— ——.

Subscribed and sworn to before me, this — day of —— 189–.
—— ——,

Notary Public, —— *County, N. Y.*

291 (PL'FF'S EX. NO. 66B, SUPP. REPT. TO ST. TAX BD.)

Form 5.

Tax district —.

Surface
Street railroads.
Animal power.
Cable conduit.
Conduit electric.
Electric overhead.
Surface steam.
Other powers.

SUPPLEMENTAL REPORT

OF THE

.....

.....

OF

TANGIBLE REAL PROPERTY

Located in, upon, under, or above streets, highways, and public places.

To —— ——:

Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank, and return to this office on or before —— —.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Form 5. *Overhead System.*

14—346

	Single track.			Double track.			
	Miles.	Age.	Miles constructed since last tax assessment.	Miles.	Age.	Miles constructed since last tax assessment.	
Bracket cons							
Wooden poles.....							
Bracket cons							
Iron poles.....							
Span wire cons							
Wooden poles							
Span wire cons							
Iron poles.....							
Total cost of property described above erected complete.....							$
Total present value based on cost of production.....							$

Conductors.

Conductors not in subways (exclusive of trolley wire).			Insulated conductors in subways.			Third rail system conductor rail.		
Miles.	Size.	Age.	Miles.	Size.	Age.	Weight per yard.	Section.	Age.

Total cost of property described above erected complete.....	$
Total present value based on cost of reproduction.....	$

Form 5. *Track.*

Motive power. *	Miles measured as single track.	Rails.			Kind of paving. †	Miles laid since last tax assessment.	
		Weight per yard.	Section girder, tee, or tram.	When laid.			
Total original cost of property described above laid complete							$
Total present value based on cost of reproduction							$

* When motive power is electricity, state whether conduit electric or overhead electric, and, if both systems are operated, report each system separately.
† If not paved, state kind of ballast and number of cubic yards per mile.

Miles of subway. *	Number of ducts. *	Type of duct.	Kind of paving.	Number of manholes.	Built since last tax assessment.		
					Miles of subway.	Number of manholes.	
Total original cost of property described above built complete							$
Total present value based on cost of reproduction							$

*Give separately miles of subways containing respectively 1, 2, 3, 4 and more ducts.

296–298 STATE OF NEW YORK, } ss:
County of ——, }

—— ——— of the —— being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

—— ——.

Subscribed and sworn to before me, this — day of —— 1——
—— ——,
Notary Public.

299 (PL'FF'S EX. NO. 66c, SUPP. REP'T TO ST. TAX B'D.)

Form 12.

SUPPLEMENTAL REPORT

OF THE

....

TO THE

STATE BOARD OF TAX COMMISSIONERS

OF THE

STATE OF NEW YORK.

To —— ——:

Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make and file a supplemental report of the matters contained in the within blank, and return to this office on or before January 25th, 1900.

Yours very truly,
STATE BOARD OF TAX COMMISSIONERS.

300 *Disbursements of Earnings for Year Ending June* 30, 1899.

Operating expenses paid from earnings..... $.....
Maintenance " " " " ..... $.....
Reconstruction " " " ..... $.....
New construction (extension) paid from earnings..... $.....
(Number of miles of latter —.)

Total..... $.....

Itemize All Sums Paid in Nature of Local Tax.

Percentage on gross earning- paid to municipality.... $.....
No. of cars — License per car $—..... $.....
.... $.....
..... $..... .....

Total amount paid for taxes, percentages, licenses, etc., etc..... $.....

STATE OF NEW YORK, } ss:
County of ——, }

—— ——, — of the ——, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declare them to be true, to the best of my knowledge and belief.

—— ——.

Subscribed and sworn to before me, this — day of ——, 1—.

—— ——,
Notary Public.

301 It is *stipulated* that the copies of the special franchises of the various relator companies annexed to their reports filed with the State Board of Tax Commissioners are correct copies of the original papers, and are received in evidence as and in lieu of the originals thereof.

It is *stipulated* that the several relator companies in the several proceedings now pending before the referee, on or before April 16th, 1900, orally and in writing requested and demanded of the said board to know the amount at which their respective tangible properties had been valued, included in the several special franchise assessments, and also that they be informed of the rule or principle adopted by the board in making their valuations and assessments upon the special franchises of the said several companies. These demands or requests were not granted, and such information was not given the relator companies by said board of assessors.

It is *stipulated* that any relator company in any certiorari proceeding now pending before the referee may read in evidence from the testimony and proceedings in any other of the proceedings now pending before the referee, subject to the objection and exception taken to the same.

Plaintiff's counsel offered to prove that the relation between the assessed value and the actual value of real property, situated in the county of Westchester during the year, which these certiorari proceedings are brought to review the assessment of, is 90 per cent. The

proof so given is of a similar nature to that heretofore given
302 in evidence by the relators as to the relation of the assessed and actual value in the county of New York.

Same objection as to the same class of testimony offered with reference to the ratio of assessment of New York.

Same ruling and exception.

It is *stipulated* that Mr. Wells and Mr. Hobbs would testify in the same manner, and in reference to the relation between real and actual value in the county of Westchester as they did in respect to the county of New York, and that they are similarly qualified as experts, and also that Mr. Priest gives similar testimony with respect to the relation between real and assessed values in Westchester to that which he gave with respect to New York county, subject to the same objection to the evidence of all three of these witnesses.

Same ruling and exception.

The testimony of Mr. PRIEST, given as aforesaid, is as follows:

Mr. FIERO: These matters we would like to have them offered separate so that we can get the benefit of an exception to them.

"Q. In valuing the property here in the State of New York was any consideration given by the board to the question of whether or not the assessment under the special franchise law against railroad companies in Westchester county was unequal or not as compared with other real estate in the county of Westchester not constituting special franchises?

A. I don't understand the question.

"The REFEREE: I don't see how it is important; they return they have assessed these franchises at their full value.

303 "Q. You have returned all these special franchises assessed as full value, have you not.

A. That was our intention at the time of making the valuation.

"Q. Your return was correct in that particular; you have returned, you assessed these special franchises at their full value?

A. It was our intention of doing it at the time of making the valuation, making a full, fair value."

* * * * * * *

"Q. Is it the fact in the county of Westchester that the actual value differs from the assessed value?

A. We so find officially.

"Q. In your judgment, I mean as a tax expert, spending all your time in the investigation of matters and statistics relating to taxes throughout the State?

A. In my judgment they are not assessing property in the county of Westchester at its full, fair, actual value of full one hundred per cent."

* * * * * * *

"Q. Have you ascertained by investigation the real and assessed values of property in the county of Westchester?

A. Yes.

"Q. What was the relation in the year 1900 between assessed value and the actual value of real property in the county of Westchester?

Same objection.

Objection overruled. Exception.

A. In my judgment it was 90 per cent. of full, fair, actual value. I am speaking of the real value. Real estate was assessed at 90 per cent. of its full, fair value. This finding is based upon the assessment rolls of 1899."

* * * * * * *

"Mr. PAGE: The figure which Mr. Priest has given with respect to that period is 90 per cent. as the relation between assessed value and actual value of 100."

304 "It is conceded that the testimony given by Mr. Priest as to the relation between the value of assessed property and the actual value of real property in the county of Westchester as 90 per cent. covers the year which these *certiorari* proceedings are to review the assessment of."

* * * * * * *

"It is *stipulated* that the testimony of Mr. Stearns and of Mr. Leaycraft, the other commissioners of the board, who have been present at this hearing at which the testimony of Mr. Priest has been given, is deemed to be given by those gentlemen as witnesses in this proceeding, and that their testimony is and is to be deemed to the same effect and to be of the same tenor as the testimony of Mr. Priest, subject to the same objections and the same exceptions as taken to the testimony of Mr. Priest."

Plaintiff's counsel offered in evidence a statement based upon the records for the year during which these *certiorari* proceedings are brought to review, of the State Board of Tax Commissioners, showing the aggregate tentative valuation of special franchises and the aggregate final assessments of special franchises made by the State board for that year; the aggregate of the tentative being $307,290,806; the aggregate of the final valuations being $266,202,759, and the difference being $41,088,047.00 between the tentative and the final valuations or assessments made by the State board of assessors.

Objected to as incompetent and immaterial.

Objection sustained. Exception.

Plaintiff's counsel offered in evidence the notice of the final assessment, transmitted on April 28th, 1900, by the State Board of Tax Commissioners to the Metropolitan Company.

Received and read, as follows:

305 *Notices of Final Assessments.*

"No. 98.

"Office of State Board of Tax Commissioners.

ALBANY, N. Y., *Apr. 28th*, 1900.

The Metropolitan Street Railway Company, 621 B'way, N. Y. city:

You will take notice that the State Board of Tax Commissioners has filed with the dep't of taxes and assessments, N. Y. city, a statement of the valuation of special franchises constructed, maintained or operated by you in the borough of Manhattan, N. Y. city, in the county of ——, at the sum of $18,377,911, pursuant to the provisions of the tax law relating to taxation of public franchises as real property and that under the provisions of such act it is the duty of the local assessors to place the assessment for such special franchise on the assessment roll in said city in the appropriate column thereof.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS,
By PETER DEYO, *Secretary*."

Plaintiff's counsel read in evidence the names of 27 other companies notified by the State Board of Tax Commissioners, the notices of assessment to whom it is *stipulated*, were similar to that of the Metropolitan Street Railway Company, except as to the address and place of location of the special franchises, together with the amounts of the assessments specified in each notice against the respective companies. This list includes reference to the amount of the Metropolitan Company, notice of which is above set forth.

This list also shows the county of location of the franchises of the companies referred to.

Received and read, as follows.

306 The following are the names, amounts of final assessments, and county of location of franchises of the 27 other companies above referred to as notified by the State board of assessors by notice similar to that above stated, except as to address and place of location of special franchises, together with the amounts of the assessments specified in each notice.

Name of companies.	Amount.	County of location.
Metropolitan Street Railway Company	$18,377,911	New York.
The Twenty-third Street Railroad Company	1,979,276	"
The Twenty-eighth & Twenty-ninth Streets Railroad Company	350,473	"
Fulton Street Railroad Company	104,530	"
Thirty-fourth Street Crosstown Railroad Co	783,547	"
Bleecker Street & Fulton Ferry Railroad Co	323,811	"
The Forty-second Street & Grand Street Ferry Railroad Company	650,613	"
Central Park, North & East River Railroad Co	1,954,712	"
Ninth Avenue Railroad Co	1,787,386	"
Eighth Avenue Railroad Co	3,968,256	"
Sixth Avenue Railroad Co	3,917,260	"
Second Avenue Railroad Co	4,057,447	"
Broadway & Seventh Avenue Railroad Co	6,319,400	"
New York & Harlem Railroad Co	6,405,075	"
Central Crosstown Railroad Co	585,693	"
Christopher & Tenth Street Railroad Co	726,927	"
The Third Avenue Railroad Co	11,247,712	"
The Forty-second Street, Manhattanville & St. Nicholas Avenue Railway Co	2,047,149	"
The Dry Dock, East Broadway & Battery Railroad Co	1,378,767	"
The Union Railway Co. of New York City (Bronx)	1,702,278	"
Union Railway Company of New York City (Manhattan)	46,000	"
The Westchester Electric Railroad Co. (Bronx)	115,800	"
The Westchester Electric Railroad Co. (New Rochelle)	142,400	Westchester.
The Westchester Electric Railroad Co. (Pelham)	18,600	"
The Westchester Electric Railroad Company (Mt. Vernon)	165,100	"
The Southern Boulevard Railroad Company	155,395	New York.
The Tarrytown, White Plains & Mamaroneck Railway Co.	98,000	Westchester.
The Yonkers Railroad Company	347,000	"

Plaintiff's counsel offered in evidence a list showing the special franchises of all companies included in the Metropolitan Street Railway system, as specified heretofore in the minutes, and in the Central Crosstown Railroad systems and the Third Avenue and Union Railroad systems, all of which special franchises so specified, it is stipulated are situated in the county of New York, with the exception of the following, which are situated in the county of Westchester.

Received and read as follows:

307 (PL'FF'S EX. LIST OF FRANCHISES, WESTCHESTER CO.)

Westchester Electric Railroad Company.

Date of franchise.	Initial streets.	County.
(1) Sept. 23/85. Mt. V., E. RR. Co.; Res. T. B. Town East Chester.	S. 5th Ave., Boston turnpike.	Westchester.
(2) June 2/91. Mt. V. E. Ry. Co.; Res. T. B. Town Eastchester.	Town Dock Rd.	"
(3) July 12/86. N. R. & P. RR. Co.; Res. B. T. Vil. New Rochelle.	Huguenot St., S. of Centre Ave., Union Ave., Charles, Webster Ave.	"
(4) July 12/86. N. R. S. H. R. R Co.; Res. B. T. Vil. New Rochelle.	Rose St., Main St., Frankline Ave., Hudson Park Rd.	"
(5) Mar. 7/98. W. E. R. R. Co.; Res. B. T. Vil. New Rochelle.	Mechanic St., Main St., Drake Ave., Pelham Rd., North St., Huguenot St.	"
(6) Dec. 5/98. W. E. R. R. Co.; Res. B. T. Vil. New Rochelle.	Main St., Huguenot St. to Centre Ave.	"
(7) July 1/99. W. E. R. R. Co.; Res. T. B. Town Pelham.	E. 3d St., Wolf's lane.	"
(8) 1892. Mt. V. E. Ry. Co.; Res. C. C. City Mt. Vernon.	Lincoln Ave.	"
(9) Nov. 1/98. W. E. R. R. Co.; Res. C. C. City Mt. Vernon.	N. 4th Ave., N. of Prospect, S. Fulton Ave.	"
(10) Apl. 18/99. W. E. R. R. Co.; Res. C. C. City Mt. Vernon.	W. 3d St., 4th to 5th Ave.	"

308 Tarrytown, White Plains & Mamaroneck Railroad Company.

Date of franchise.	Initial streets.	County.
(1) Aug. 17/96. N. Y. E. & W. P. Ry. Co.; Res. T. B. Town Greenberg.	White Plains and Tarrytown roads.	Westchester.
(2) Mar. 3/96. N. Y. E. & W. P. Ry. Co.; Res. T. B. Harrison.	Harrison St., Underhill Ave.	"
(3) 1898. T. W. P. & M. Ry. Co.; Res. T. B. Town Harrison.	Mamaroneck Ave.	"
(4) Mar. 2/98. T. W. P. & M. Ry. Co.; Res. T. B. Vil. Mamaroneck.	Mamaroneck Ave.	"
(5) Apl. 1/99. T. W. P & M. Ry. Co.; Res. T. B. Town Scarsdale.	White Plains road.	"
(6) Mar. 9/98. T. W. P. & M. Ry. Co.; Res. T. B. Town White Plains.	Mamaroneck Ave.	"
(7) Sept. 14/97. Res. B. T. Vil. White Plains, T. W. P. & M. Ry. Co.	White Plains road, Tarrytown road, R. R. Ave., Broadway, Lake and Harrison Sts.	"

Yonkers Railroad Company.

(1) Aug. 2/94. N. & S. E. R. R. Co.; Res. C. C.	Palisade Ave., Park Ave., Shonnard place, S. Broadway.	Westchester.
(2) Feb. 8/86. Y. R. R. Co.; Res. C. C.	Warburton Ave., Main Elm, Nepperhan Ave., Riverdale Ave., Yonkers Ave., New Main St. A.	"

Adjourned to Wednesday, September 4, 1901, 11 a. m., at the capitol, in the city of Albany, N. Y.

309 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE Metropolitan Street Railway Company
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. Stearns, Constituting the State Board of Tax Commissioners of the State of New York. } Continued.

ALBANY, N. Y., WEDNESDAY, *September* 4, 1901—11 a. m.

Parties met pursuant to adjournment.
Same appearances as before.

GEORGE E. PRIEST, recalled:

Examined by Mr. PAGE:

Q. Have you read over your testimony in the Metropolitan case since the last hearing?

A. I have had a chance only to glance at it; for the last week I have been very busily engaged on the State equalization table.

Q. In that testimony were enumerated various facts and matters which the board considered as factors or elements entering into other valuation of assessments, do you remember?

A. Yes.

Q. Has anything occurred to you since the last hearing as
310 being a fact or matter which the board considered as factors or elements entering into their valuations or assessments upon which the basis of valuations and assessments were made other than what you referred to in your previous testimony?

A. No; only this occurs to me in that connection that I might have added that those factors or elements which were considered were taken into consideration for the formulation of the tentative value, after which we had the guidance of the statements and the evidence and the affidavits and the arguments put before us at the hearings upon which to review these tentative valuations and find the final as certified by us.

Q. With respect to these franchises which were owned by individuals and assessed against them, it is a fact, is it not, they aggregated something in excess of a hundred altogether?

A. There were several hundred.

By Mr. BROWN:

Q. Won't you answer the question first asked you; is there any fact which the board considered in determining the value of these special franchises which you have failed to enumerate?

A. I couldn't answer that. I suppose there were a thousand facts.
Q. Is there any fact that you considered that you have not enumerated that you can now state?
A. No; I cannot.

By Mr. PAGE:

Q. At a prior hearing in one instance, you were asked whether your testimony as given with respect to the Metropolitan Company also applied to other companies in the city of New York; I understood then, and ask you to confirm me, if I am right, that the testimony applicable to the Metropolitan and to other companies
311 in the city of New York also applied to companies in Westchester county and elsewhere in the State?
A. Yes, sir.

The following testimony from other cases under *stipulation* was read in evidence, subject to objection and exception, as therein stated—such testimony being, viz.:

(Consolidated Gas Company case, pp. 21–29.)

By Mr. PLATT:

Q. In making the assessment of the special franchises of the Consolidated Gas Company, did the board place separate valuations on the special franchises and on its tangible property included in the special franchises?

Objected to upon the ground that the tangible property is a part of the special franchises, and the question implies that it is not a part of the special franchises.
Objection withdrawn.

A. No, sir; they were found together.
Q. Do you make the same answer to a similar question with respect to the valuation of the tangible property of the various other companies whose certiorari proceedings are now before the referee?

Objected to as too general, immaterial and irrelevant.
Objection withdrawn.

A. Yes, sir.
Q. The Consolidated Gas Company had several special franchises, as reported in this report. Did your board, in assessing the franchises of the Consolidated Gas Company, as shown by Schedule C of this return, fix and determine separately the value of each of those special franchises?
A. It did not.
312 Q. Did your board fix and determine separately the valuation of the special franchise which the Consolidated Gas Company derived from the New York Gas Light Company?
A. No, sir.

Q. Nor the special franchise which it derived from the Harlem Gas Light Company, or any other of the constituent companies?

A. No one of the six companies. They were found all together.

Q. Where in your previous testimony as to the Metropolitan Street Railway Company you said you made one assessment to cover all franchises of one company, did you mean by that to say you made one valuation of all the special franchises together, and no separate valuation of each separate special franchise?

A. That was my intent.

Q. In all of the cases where there are the proceedings before the referee, where there was one company having several separate franchises you valued all of these franchises together in one valuation and made one assessment?

A. Yes, where the parent company had merged into the constituent companies, and there was the annual report of the gross earnings.

Q. When you say the "parent company," you mean the company which had by consolidation or by lease received the franchises of previous companies?

A. That is my meaning.

By Mr. BROWN:

Q. Where you use the term "merged," you include franchises that were owned by lease or by contract?

A. Yes.

By Mr. PLATT:

Q. I understand, from your previous testimony, that in assessing the special franchises of the different companies, you valued these special franchises according to the earnings of the company?

313 A. That was one of the elements taken into consideration. Yes, sir, and one of the principal elements.

Q. If the earnings of the company were larger then the valuations were made larger, and if they were smaller the valuation was made smaller?

A. I think I may answer yes to that proposition.

Q. In valuing the special franchises, then, you valued them according to the extent of the use that was made of them?

A. We placed valuations upon special franchises which were not in use, if that is an answer.

Q. In some cases?

A. In some cases; yes, sir.

Q. In these cases that are now before the refferee on these certiorari proceedings, you valued them, to some extent, at least, according to the extent of the use that was made of the franchises?

A. Yes, sir.

It is *stipulated* that all the testimony given by the witness at this hearing as to the method of ascertaining the value of the special franchises is deemed to be given in all the cases pending before the referee, so far as it is applicable.

Q. Do you not now consider that the earnings of the company were derived from the use of all of the property, franchises, rights, contracts and good-will of the company?

A. I do.

Q. And from its good-will?

A. Yes, sir.

Q. Included in the property of the Consolidated Gas Company was real estate not connected with the special franchises, consisting of gas-houses and other real property in use in the business of the company, as shown by Schedule K of the report; was not some portion of the earnings derived from the use of that property?

A. Yes, sir.

Q. Do you know of any way to estimate what part of the
314 company's earnings were derived from that real estate separate from its other property and rights?

A. I know of no rule.

Q. You understand also that the company had a franchise to make gas in its gas-houses and sell gas in public and private places in the city of New York; was not some portion of the earnings of the company derived from the use of that franchise?

A. From the exercise of the right to be a corporation?

Q. From the exercise of the right now I refer to the right to make and sell gas?

A. Yes.

Q. Do you know of any way to estimate what part of the company's earnings were derived from that franchise to make and sell gas as separate from its other property and franchises?

A. I know of no such rule; no, sir, nor way.

Q. The company, also, it appears by Schedule K of the report, had 103,866 services into houses and buildings in New York and the contracts by which gas was delivered in those; those constituted a part of the property and assets of the company; was not some portion of the earnings derived from those rights in private houses? I intend now to refer to the contracts with private individuals which the company had, under which the individual took gas, and which constituted an asset of the company; and the question I ask you is whether the company did not derive some part of its earning from that property, consisting of those contracts and rights in private houses?

A. Undoubtedly so.

Q. Do you know of any way by which it can be estimated what part of the company's earnings were derived from those contracts as separate from the other property and rights of the company?

A. I know of no definite rule.

Q. The company also had a franchise to be a corporation
315 and to do business as a gas company; was not the use of that franchise of some value to it in making its earnings?

A. Yes.

Q. Do you know of any way by which it could be estimated what part of the company's earnings were derived from the use of that franchise, as separate from its other property and rights?

A. No exact rule; no, sir.

Q. The good-will of the company was also one of its assets from which it derived part of its earnings; do you know of any way by which you could estimate the part of the company's earnings which were derived from its good-will as separate from all its other property and rights?

A. Not definitely; no, sir.

Q. How many distinct assessments of special franchises did your board make for the year 1899?

A. About 5,000.

Q. What part of the year did it take to make those assessments?

A. It took most of the year, from April to October.

Q. These assessments were against individuals as well as against corporations?

A. Some few of them.

Q. In your former examination in the Metropolitan Railroad Company case you stated the board took into consideration, in arriving at the value of its special franchises, as an appreciating factor, the entire value of the corporate assets of the company; did you in arriving at the valuation of the special franchises of the Consolidated Gas Company and the other companies that are now here in these proceedings before this referee, take into consideration all the corporate assets of those various companies?

A. We did.

Q. Schedule D of the Consolidated Gas Company return shows that it had stock and bonds of other companies to the value of $5,574,438, and that this was the stock of the Mutual Gas Light Company of New York, a gas light corporation which was doing business in New York city; I want to ask you whether the Mutual Gas Light Company is not one of the companies whose special franchise your board assessed separately?

316

A. Yes; that is my recollection, that it was separately assessed.

Q. Is it not true that your consideration of the large market value of Consolidated Gas Company stock and of its earnings enhanced the valuation of its special franchises?

A. Yes, I think they were deemed more valuable because of that.

Q. I want to ask you whether you make the same answer to a similar question with respect to the various other companies whose proceedings are here before the referee?

A. I do.

Q. I want to call your attention, for the purpose of identification, to a statement which appears in the return which the board made to the certiorari proceedings in the Consolidated Gas Company case; in that return you state that "among other things respondent ascertained that the relator had heretofore claimed the value of its franchises to be upward of $7,000,000." I would like to have you identify where that statement was made?

A. That was made to the New York city department of taxation and assessments.

Q. In one of the reports which the Consolidated Gas Company made?

A. Yes, sir.

Q. Did you find that the relator had anywhere in that report, or at any time, stated that the value of its special franchises, as defined in this act, was upwards of $7,000,000?

A. No; didn't have reference to the special franchises.

Mr. FIERO: All this evidence is taken subject to the objection made to the evidence of Mr. Priest on the former hearing to questions of like character, and with the same ruling and exceptions.

317 (Coney Island & Brooklyn Railroad Co. case, Sten. Mins., pp. 17–21.)

By Mr. DYKMAN:

Q. In valuing the special franchises of the Coney Island & Brooklyn Railroad Company, did the board take into consideration that it had continuous lines of street railway from Park row, Manhattan, to the Williamsburg ferries at Broadway and Grand street, and of Hamilton and Fulton ferry?

A. I think so; if such was the fact, we did.

Q. That was the fact?

A. Then it was so considered.

Q. Did the board determine the special franchises of the Coney Island and Brooklyn Railway Company to be more valuable by reason of those continuous lines to those several termini?

A. If it increased the earnings, yes.

Q. If it made the earnings more, I presume?

A. Yes.

Q. In effect you did consider these lines to those termini as making earnings?

A. Yes, sir.

Q. Did the board determine the gross and net earnings of the Coney Island and Brooklyn Railroad Company to be a fair measure of the value of the special franchises?

A. Well, as I have previously stated, it was considered as one of the elements, one of the principal elements; I am not prepared here to state it was the only element entering into consideration.

Q. You wouldn't vary your testimony in the case of this railroad from the answer made in the case of other railroads?

A. No, because I have no distinct recollection.

Q. Given the same consideration and same weight and effect?

A. I should assume so.

318 Q. The State Board of Tax Commissioners separately valued and assessed the special franchises of the Brooklyn City and Newtown Railroad Company at $819,000, did it not?

A. If they were separately reported, yes.

Q. You did make a separate assessment at $819,000?

A. I don't recall the figures now.

Mr. DYKMAN: The special franchises of the Brooklyn City and Newtown were assessed at $819,000.

Q. That was reported to you as leased to the Coney Island and Brooklyn Railroad Company, was it not?

A. I am not clear in my recollection upon that; I haven't looked it up; I have had nothing to refresh my memory.

Q. In considering the gross and net earnings as a measure of value of special franchises, was any attempt made to divide earnings and apportion one to the lessor system and the other to the lessee system in the case of the Coney Island and Brooklyn Railroad Company, where the gross earnings were reported to you as being made by both systems?

A. Will you allow me a moment to refresh my memory?

Q. Surely?

A. (After conference.) We did separate the earnings of the two companies.

Q. Did you know that the two companies were operated as one system?

A. I think we did.

Q. And no division was made in the report?

A. No; we made the division.

Q. You apportioned one and set apart one portion of the net earnings to one company and the other portion to the other company?

A. That is true.

Q. Was the greater portion put down to the lessor or the lessee?

A. I can't remember the exact proportion now.

Q. Can you remember whether the one or the other was greater?

319 A. I cannot at present. In making this valuation an apportionment was made from the gross earnings of the larger company to these other companies because they were reported in bulk in the one report in the one company.

By the REFEREE:

Q. Were they assessed in bulk?

A. No; the companies he now refers to were separately assessed.

Q. Your assessment shows that?

A. Yes, sir.

By Mr. DYKMAN:

Q. Was any portion of the earnings apportioned to that part of the Coney Island and Brooklyn Railroad Company, between Prospect park and Coney island, which you have not valued and assessed as a special franchise?

A. I don't recollect.

Q. Did you take the whole portion of the gross earnings which you set apart to the Coney Island and Brooklyn Railroad Company into consideration when you valued its special franchise?

A. Is that the road about twelve miles in length to which you

now have reference and a portion of it you claimed was in turnpike?

Q. Yes, sir; that is the road?

A. No; we held that to be private right of way, and put a valuation, I think, upon only some six miles of it. I am not clear as to the exact proportion, but I think it was about one-half of it.

Q. These portions of the gross earnings in the division made by you were considered the fair measure of the value of the special franchise?

A. They were considered as a guide, as an element, as a factor, certainly.

Q. And as the most important factor?

A. As one of the most important.

Q. Can you give the method by which you made the di-
320 vision between the lessor and lessee system?

A. No, I cannot in detail; it is my recollection that we assumed a certain per cent. for operation of that mileage, but as to the exact details, I am unable to state them.

Q. Did you divide them according to the respective mileages or respective length of road?

A. I am unable to state the details at this time.

Mr. FIERO: The same objection and exception to this evidence is made as in the Metropolitan case.

(Brooklyn Union Gas Company case, Sten. Mins., p. 6.)

By Mr. DYKMAN:

Q. In the case of the Brooklyn Union Gas Company did you separately value the special franchises which the Brooklyn Union Gas Company purchased from the Williamsburg, Brooklyn, Metropolitan, Citizens', People's, Nassau and the Fulton Municipal Gas Companies?

A. To the best of my recollection we did not so separately make the valuations.

Q. Made one assessment over all these special franchises?

A. That is my recollection.

(Brooklyn Heights Railroad Company case, Sten. Mins., p. 29–30.)

By Mr. COLLIN:

Q. Do you remember the Brooklyn Heights Railroad Company was lessor and operated the railroads of several other railroad companies?

A. I do.

Q. What *have you* stated in answer to the question of Mr. Dykman with reference to the apportioning of the gross earnings between lessor and lessee companies was true also of this system of companies, was it not?

A. I think so.

321 Q. And also what you testified to in relation to the termini and the value on account of the continuous lines was true as to this system of companies?

A. That would be true.

Q. Do you remember the Brooklyn, Queens County and Suburban Railroad Company was operated by the Brooklyn Heights Railroad Company as lessor and lessee; do you remember the method by which you apportioned the gross earnings from the operation by the lessee between the two companies in making your estimate of the gross earnings of each company?

A. I do not remember.

Q. Is that true of all those lessor and lessee companies in the Brooklyn Rapid Transit cases?

A. Yes, sir.

Recess.

Afternoon Session.

HERBERT H. VREELAND, sworn for the plaintiffs, testified:

Examined by Mr. PAGE:

Q. You have been engaged in the railroad business for many years, have you not?

A. I have.

Q. You have studied railroad problems and values, both steam and surface, from all points of views, have you not?

A. I have.

Q. Are you president of the Metropolitan Street Railway Company?

A. I am.

Q. How long have you occupied that position?

A. Since June, 1893.

Q. Will you please state the way in which the system of the Metropolitan Company, as it existed on January 7th, 1900, came to be developed with reference to the question of motive power,

322 stating first the condition of the system, or such of it as then existed when you became president, and the subsequent developments of it?

A. When I became president in 1893 the Broadway cable line had been partially constructed but had not been put into operation. At that time it was operated by horses. In July, 1893, the construction was completed and that line was put in operation by cable from South ferry to the Central park. The next question of changes and developments in motive power was the construction of the Columbus and Ninth Avenue railroad and the Lexington Avenue line, each of which were constructed as extensions of the Broadway cable system. At the time this construction work was taken up the most eminent electrical engineers of the country said that it was impossible to control high voltage electric currents by the underground system of

distribution; every attempt had failed that had been made in this country or abroad. So we completed those lines, four cable roads, and put them in operation by cable as extensions of or part of the Broadway system. While this work was going on we had the question of electric distribution through conduits very carefully examined into, and we expended about $500,000 in investigations and experiments in the United States and in all the continental countries of Europe. After this investigation it was decided by the electrical and mechanical engineers that electricity might do this work; they were not sure that it could be controlled. At that time we were about to build what is known as the Lenox Avenue extension of the Columbus Avenue line, which goes to the end of the Columbus Avenue line to the Harlem river. We constructed this for a cable road at a cost of about $75,000 a mile more than it would have cost to have constructed it for electrical operation. The reason for this was that in the event of failure of electrical operation
323 we could put in the cable without again tearing up the street. We turned the line over to our own electrical engineers and those of the General Electric Company and gave them a year to experiment.

By the REFEREE:

Q. You in the meantime using the cable?

A. Using the cable on the other lines, but on this new line we used electricity; they were experimenting with electricity on this particular line I speak of. At the time we started this operation it had no physical connection with anything; it was an extension in the upper part of the city which we really turned over to this experimental operation. During this year of operation the whole theory and system of distribution and control which we started out with was changed, and we standardized it with the systems of distribution, with reference to voltage, &c., of the country, so that it made the cars uniform with those of the United States. At the end of this year of investigation the directors of the company asked the president and electrical engineers if they were willing to advocate the electrical system as a success both from a practical standpoint and also a commercial, and the answer was yes; that was in 1895.

Q. Let me ask—electrical roads were in use all over the country at that time?

A. Yes; all by the overhead trolley; the overhead trolley was prohibited in New York city. The syndicate which controlled our property at the time this investigation was made had about a thousand miles of overhead electric road in operation in the United States, but couldn't utilize that system in New York, and we came up against a novel electrical engineering proposition. The following year there were rapid changes made in motive power in
324 the Second, Fourth, Sixth, and Eighth Avenue longitudinal lines and a number of the crosstown lines. Since that period, from year to year there have been constant additions to the electrical mileage through changes.

By Mr. PAGE:

Q. Electricity was installed on those roads?

A. Yes; since that year there have been constant additions to the electrical mileage both through the change of motive power of horse lines and the construction of additional lines until 1900, when the question of the substitution of the underground electrical system for the cable system on the whole lines came up. The reason for this substitution was that with all of our main longitudinal lines and crosstown lines electrically operated and the trunk line of the system operated by cable it made the cable system just as independent of the operation of the other lines as though some other company owned it. In a word, there could be no interchange of cars; all passengers, many thousands a day, had to be transferred at connecting points with the electrical road, and to get a uniformity of operation and elasticity it was decided to make that change. The cable system at this time was in first-class condition; the plant was good for 20 years of operation with the ordinary repairs, but it was considered, both in the interests of the public and the company, wise to do away with it and supplant it with electricity, and this was done at a cost of about six millions of dollars and a loss of six millions of dollars in equipment, mechanical, cable equipment and street construction, which did not appertain to the electrical operation. With these changes of motive power came the introduction of a universal transfer system. When I became president, in 1893, there were only about four points of transfer in the system; they were added to from
325 time to time, and as we changed motive power they were introduced at all intersecting points, so that in 1900, the commencement of 1900, the company maintained about 275 transfer points, and transferred in that year about 160,000,000 of people, and of these transfer points only about 25 per cent. were legal obligations of the company. In a word at the present day we maintain—they have increased this last year—we are maintaining to-day over 300 transfer points there is no legal obligation on the company to maintain, but through these transfers it adds very largely to the business of all lines, crosstown as well as the longitudinal lines.

By Mr. BROWN:

Q. By transfer points you mean where passengers are transferred from one line to another without the payment of any additional fare?

A. Yes, sir. I can explain that more in detail by saying in 1893 a passenger could only ride the length of a longitudinal line in New York city for a single fare, which would not exceed ten miles, and could only ride the length of a crosstown line for five cents, which did not exceed two and a half to three miles. Under the present system a passenger can ride not only the length of any longitudinal line but can transfer for the same fare to a crosstown line and also continue to ride on any parallel line running in the same general direction through the city.

By the REFEREE:

Q. Transferred twice, first to crosstown and then back again to a longitudinal line?

A. Yes.

By Mr. BROWN:

Q. Can transfer more than twice?

A. As long as he keeps going in the same general direction he can transfer half a dozen times. The theory is, starting from
326 Harlem you can go to any railway station, any steamship line, anywhere where our lines go, irrespective of how you get there.

By Mr. PAGE:

Q. What relation does the volume of transfer, or free ride business, bear to the cash business of the company?

A. During the present fiscal year ending June 30th, 1901, the system carried 395,000,000 of cash passengers; of these 50 per cent. were transfers, or people that took a second ride for the five-cent piece, making the average fare on our system, when the transfers are taken into consideration, two and a half cents for every passenger that rides.

By the REFEREE:

Q. That is more than all the other railroads in the State carry?

A. Yes; the movement of the transfer and cash business combined is more than the movement of the total steam railroads in the United States.

By Mr. PAGE:

Q. Will you please state what change took place in the gross receipts of the various companies after the motive power had been changed?

A. After the motive power had been changed and the transfer system inaugurated the receipts were doubled, in some instances nearly trebled. As a special instance, the Fourth and Madison Avenue line, the first year that the Metropolitan Company operated it after the lease, it was operated by horse power the same as prior to the lease, the gross earnings were $760,000 for the year, with operating expenses of about 70 per cent. The first year of electrical operation the gross earnings were $2,000,000, and the operating expenses 35 per cent. This followed with all the other lines—
327 Second, Sixth, Eighth Avenues, Twenty-third Street, &c., in the city.

Q. Did you state how much the Metropolitan Company expended in changing the motive power of the Fourth and Madison Avenue line to the underground electric?

A. Three millions and a half.

Q. Will you state what division of fares takes place, so far as joint

business is concerned, on the Lexington Avenue line, as compared with the line of which that was an extension?

A. The Lexington Avenue line bears a proportion under the statute, of about nine to one as against the system, which makes the portion of the fare collected on Lexington avenue, belonging to the Lexington Avenue franchise, one half of one cent.

Q. Can you illustrate any other cases where the special franchise has been acquired as the extension of another line, what proportion the fare on the extension bears to the rest of the system?

A. The Columbus and Ninth Avenue extension—the proportion that belongs to the Columbus and Ninth Avenue, under the statute, is one quarter of one cent. There are other lines which come down to a lower fraction of the five-cent piece than that.

Q. So you mean the owner of the special franchise to which you refer receives in the case you referred to one-quarter of one cent for each fare received on joint business?

A. Under the Cantor act; that is the statute under which an extension was purchased by a company that the fare should be apportioned between that extension and the main system as the whole mileage of the main system bore to the extension.

Q. The Metropolitan Street Railway Co. now owns how many special franchises?

A. Eighteen.

328 Q. Will you explain, referring now to the map of the Metropolitan Company heretofore marked "*Pfffs' Ex. No.* 63," the way in which cars are operated, or the operation of cars upon the franchises owned by the Metropolitan Street Railway Company, taking the first cable system on Broadway, or what was the cable system?

A. Do I understand your question as to the operation of the length of the island or over a particular franchise?

Q. Take the cable road as it was, and then explain the different franchises those cars run over?

A. At present a car leaving South ferry runs to 15th street and Broadway on the old Broadway and South ferry and Broadway Surface Railroad franchise, which is owned by the Metropolitan Company. It runs from Broadway and 14th street to 53d street and Seventh avenue over the franchise of the Broadway and Seventh Avenue Railroad Company, which is leased by the Metropolitan; it runs from 53d street and Seventh avenue to 53d street and Ninth avenue over an extension of the Metropolitan Street Railway Company; it runs from 53d street and Ninth avenue to 65th street and Ninth avenue over the Ninth Avenue Railroad Company, which is leased to the Metropolitan; it runs from 65th street and Columbus avenue to 109th street and Columbus avenue over the lines of the Columbus and Ninth Avenue Railroad Company, which is part of the Metropolitan system, owned by the Metropolitan; runs from 109th street and Columbus avenue to 116th street and Lenox avenue over a line owned by the Metropolitan; runs from 116th street

and Lenox avenue to 146th street and Lenox avenue over an extension of the Sixth Avenue Railroad Company, which is leased.

Q. Therefore, this car runs over the railroads belonging to several distinct corporations, and runs over the special franchises, and runs over, in some cases, several special franchises belonging to each of these corporations?

329 A. The special franchises it runs over belong to the Metropolitan Co.

Q. Some are owned by the Metropolitan Co. and some are leased by the Metropolitan Co., the Broadway and Seventh Avenue, for instance, and the Sixth Avenue and Ninth Avenue?

A. Yes; the question was, whether it ran over these special franchises. They run over leased lines, treating them all as special franchises.

Q. Now, take the east side?

A. A car leaving South ferry would use the South Ferry road and the Broadway surface road to 14th street and Broadway, and use the Broadway and Seventh Avenue road to 23d street and Broadway; would use the 23d Street Railroad tracks from 23d street and Broadway to Lexington avenue and 23d street; use the Lexington Avenue franchise, which is part of the Metropolitan system, from 23d street and Lexington avenue to the Harlem river.

Q. If it went west through 116th street to Lenox?

A. It would use the Sixth Avenue extension, if it went that way.

Q. They do run that way?

A. Yes; it is a regular line.

Q. What would be the effect upon the earnings of the Metropolitan Street Railway Co. if this company were operated as a system by itself, and without reference to the running of any of its cars upon lines of other companies?

Objected to as irrelevant and immaterial.

Objection overruled. Exception.

A. If all the properties controlled by lease by the Metropolitan system were taken by their owners, leaving only the Metropolitan system, there is not a single line in the Metropolitan system that would pay its operating expenses.

Q. Do you mean that is owned by the Metropolitan?

A. That is owned by the Metropolitan.

330 Q. How could the railroad of the Metropolitan Street Railway Co. be operated by itself if the system should disintegrate so as to render that necessary?

Objected to upon the ground that it appears from evidence put in by the relator that they hold leases or own these other roads, and it is immaterial and irrelevant.

Objection overruled. Exception.

A. There would be an independent operation of each of the special franchises, as there are a number of them that have no con-

nection or relation to each other except through connections made by leased lines.

Q. Assume that the system of the Metropolitan Street Railway Co. were d sintegrated so that each corporation would operate its own franchises and have its own management, what effect would this have on the gross earnings, in your opinion?

Same objection, ruling and exception.

A. It would reduce the gross earnings of any line and all of the leased lines in the system, if operated independent of the Metropolitan, and each on their own franchises, by 40 per cent.

Q. What effect would such system of operation have on the net earnings of the component companies?

Same objection, ruling and exception.

A. It would reduce the net earnings a larger proportion than it would the gross, because there is not a railroad in New York city to-day that owns a power house or owns any cars except the Metropolitan Street Railway Co., and it would require additional capitalization by each of these railroads to supply themselves with power and cars and the necessary equipment to operate their roads, increasing the fixed charges and consequently reducing the net earnings.

331 By Mr. BROWN:

Q. Can you state any economies in the way of management and operation that result from the consolidation of those various roads in the Metropolitan system?

A. Each independent railroad company by itself alone, ten miles or 500 miles, maintains an executive, financial, accounting and operating organization, also the necessary power and equipment to operate the individual line. In the case of the Third Avenue Railroad Co., which we took last year, the whole executive, financial, accounting and supervisory and operating organization was done away with and the same duties transferred to the same staff of officers of the Metropolitan, and entailing no additional expense on the Metropolitan, and wiping out an organization charge of about $100,000 a year on the Third Avenue system. The furnishing of power to the Third Avenue system from the Metropolitan central station, which the Third Avenue were charged for at cost from the Metropolitan, cost a cent and a half a car mile to the Third Avenue against a cost of six cents a car mile for the current operated from the character of stations they had.

By the REFEREE:

Q. Was this the first installation of underground electricity for propelling railroads?

A. In the United States; it has been used in Budapest, but not under the standard conditions of operation we had; it was always possible to control current under the ground at low voltage—200 or

250 volts. They run with 250 volts at Budapest, but it was absolutely necessary for us to have a uniform system standard with the overhead trolley, so that we could connect as we do to-day—we run a car to-day from downtown in New York, lift the plow
332 out and put the trolley pole on and run the car to Yonkers.

Q. What number of horse power have you in your power house?

A. 70,000.

By Mr. PAGE:

Q. State, when you planned to change the motive power on the Broadway line, what condition you found, with respect to the use of parts of that line by other companies, and what steps were taken in relation to the same?

A. The 42d Street and Grand Street Ferry Railroad Company had the right to run horse-cars on Broadway from 34th to 23d street, on 23d street to Fourth avenue and on Fourth avenue; the Bleecker and Fulton Ferry Railroad Co. had a right to run horse-cars on Broadway from Bleecker street to the post office; this confined the cable operation to horse-car speed in those sections, making it necessary to get the horse-cars out of the way; this could only be done by acquiring those properties. Those properties were bought, not on any basis of gross earnings, not on any basis of possible gross earnings, but they were bought on a nuisance value, and the very highest value put on to them by their owners; the properties were bought to get the horse-cars off the road, and neither one of the properties has anywhere near earned the guarantees under the leases since we have had them, and the Bleecker Street and Fulton Ferry road don't earn its operating expenses.

Q. These lines had prior rights in the streets?

A. They had franchise rights and also contract rights.

Q. Were there any other cases in the city where you, in changing your motive power, encountered the tracks of other companies having prior rights in the street, your rights being subordi-
333 nate to their rights?

A. Owing to the peculiar topographical conditions existing in New York city there is not a single line that I know of in the city, but what some other company has the right to use certain portions of their tracks. We have to lease the Ninth Avenue railroad, which ran only horse-cars and carried very few passengers. We leased that at an exorbitant rental, simply to get those cars off the cable lines from 53d to 65th street, on Ninth avenue. That is true of every line in the city.

Q. In leasing these various lines, did you lease anything besides the right to use the railroad tracks?

A. We leased all real estate, all rolling stock, horses, equipments, tools, implements of every character.

Q. The rental value you pay under these leases includes these other elements, does it, besides the right to use the tracks?

A. It does.

Q. In the case of the Broadway and Seventh Avenue Railroad Company what was the real estate worth which you leased with the railroad itself at that time; I mean the real estate off the line of the road?

A. The real estate of the Broadway and Seventh Avenue Railroad Company in 1893 was worth two millions of dollars.

Q. Not in the street?

A. Not in the street.

By the REFEREE:

C. Where is your power house?

A. 96th street and East river.

By Mr. PAGE:

Q. What effect, in your experience, has the giving of transfers or the establishing of a transfer system on one line as distinguished from another had on the earnings of the line from which it was taken, or *vice versa?*

A. The transfer system between two lines will make each
334 line earn more money than they could operate independently without the transfers.

Q. Can you illustrate that in a special instance?

A. When we bought the Central Crosstown railroad—bought control of it—it had a contract transfer agreement with the Third Avenue Railroad Company for transfers at three points. This transfer agreement was revocable on sixty days' notice. I made a personal examination of the transfer business between those two lines, and the transfer business was worth to the Third Avenue Railroad Company $75,000 a year, and the agreement was cut off and the business transferred to our own lines. There has been the same experience with all of the crosstown roads in the city, not only contributing to the gross earnings of the crosstown roads, but also the longitudinal line, by reason of the connection. Thousands of people given the opportunity to ride two blocks on a crosstown road and take a free transfer to a longitudinal line, that longitudinal line bringing them nearer their homes, use our lines in preference to taking the elevated railroad, which in many instances is in easier walking distance than our longitudinal line would be.

Q. What would be the effect, assuming the various leases of your system were rescinded or cancelled, of the withdrawing of the transfer facilities which you now voluntarily concede to leased lines?

Same objection as to previous question of like character.

Same ruling and exception.

A. It would make a very large decrease in the gross earnings of all the lines.

Q. Will you state what has taken place in the case of any of the lines which your company has acquired by lease or otherwise with respect to the securities of these companies?

A. About a year ago, a little over a year ago, the Third
335 Avenue railroad was bankrupt, the stock was selling for fifty cents on the dollar; within a week after sales were made at $50 a share the stock was selling above par.

Q. What change had taken place?

A. The only change that had taken place in the interval was, it was publicly known that the Metropolitan Street Railway Company had acquired a controlling interest in the Third Avenue Railroad system. In the case of the Second Avenue railroad, with no change in the physical conditions for two years after the stock was acquired, the road did not earn its fixed charges, but the stock doubled in value.

Q. Went up more than a hundred per cent.?

A. Yes.

Q. Has that happened in the case of any other company?

A. There has been no case of the acquisition by our company of properties through lease, or purchasing of control, but what has increased the market quotations of stock at least 50 per cent.

Q. What can you say with respect to the considerations affecting the sales of bonds of street railway properties in the city of New York?

A. The bonds on street railway properties are issued for various purposes. They are usually issued for original construction, or changes of motive power, and in the sale of bonds a company that has a management which has the confidence of the financial interests of the city, as well as the confidence of the public, can place its bonds at about par, which was the case in all the issues of our bonds. Take a company whose management had no railroad experience and little financial backing, the bonds are usually placed at 50, 60, or 70 cents on a dollar.

Q. You are familiar, are you not, with prior sales of all bonds of street railways in the city of New York?

A. I am.

336 Q. Have the bonds in those cases, as a rule, sold above par?

A. All the bonds placed by the Metropolitan system have sold approximately at par.

Q. I refer now to the securities of the old underlying companies before your company took hold of those same properties?

A. I do not know of a single instance in which the bonds of any of the independent companies were sold at par.

By the REFEREE:

Q. Do you mean before or after?

A. Before.

Q. How was it after?

A. Under all our leases we have no right to bond the properties.

Q. The bonds that were on the company?

A. The old bonds that were on those properties, all underlying five per cent. bonds are now selling on an average of about 120.

By Mr. PAGE:

Q. What can you say on the subject of gross earnings as an element bearing on the value of a special franchise of a street railway company?

A. If gross earnings are considered as an element of value in considering a street railway franchise it throws out every consideration of the personal element which enters into organization, management and method of operation. The Third Avenue Railroad Company was bankrupt in the hands of the same men who had handled it since its organization. The same property in the hands it is at present, with a judicious expenditure of money and the economical methods of operation that obtain in the management of the general system, is being operated for 10 to 15 per cent. less than it was when it was taken, and a more satisfactory service rendered. The large expenditures of money and skill and ingenuity brought to bear upon a problem of that character by trained men have as much of a value in my opinion, or more, than
337 gross earnings. The expenditures of money in development carried on with prudence always results in a large return for a financial risk. In the case of the Metropolitan Company, it expended over half a million dollars in the effort to develop a self-contained motor car which could be handled between ferries and depots and without the necessity of tearing up the streets, and as before stated the company expended over a half a million dollars in the development of the underground electric system.

By the REFEREE:

Q. "Self-contained;" do you mean storage batteries?

A. Yes, or compressed air, or gas, or anything of that character.

By Mr. PAGE:

Q. What did you expend on compressed air?

A. $800,000.

By the REFEREE:

Q. Have you made it a success?

A. Not yet; no, sir. In considering the question of gross earnings as an element, J. P. Morgan & Co. occupy a site and building at Broadway and Wall street; their business is worth many millions of dollars a year; this business is through the business ability and skill of the men managing it; it has connections all over the world; each one bears its own proportion of burden in its own location. There is another piece of real estate right next to it that has a banking house on it; the site and building is equally valuable and desirable; that concern does only a small business. To say that one is worth as much as the other throws out the personal element of ability, business ingenuity, financial connections and every-
338 thing of that kind. Take a trust company that was chartered by the State, let it lease a piece of property from the

city at a specified rental; to-day the business of the trust company develops by reason of the financial skill and ability of the men handling it into an enormous business; the city comes along and says: "Your business has increased so much we will increase your rent two or three hundred per cent." In my opinion they are both parallel cases to the question of considering gross or net earnings in the value of a franchise. The same thing is true of the city's property in docks; the city leases a property to a steamship company for a specified rental for the dock and its improvements; it is immaterial how many thousand tons of freight or how many thousand passengers that steamship company handles the rental value under the lease of that property and the conditions remain the same.

By Mr. BROWN:

Q. I understood you to say in the case of the disintegration of the Metropolitan systems and if the Metropolitan railroad operated, ran its cars, only on those streets or parts of streets where it owned separate franchises, the Metropolitan Company wouldn't pay its running expenses; is that right?

Same objection, ruling and exception.

A. That is right.

Q. What did you say in reference to the 40 per cent. reduction, what roads did that apply to?

A. It applied to any leased line in the city returned to its independent management.

By Mr. PAGE:

Q. That would be the case, would it not, with respect to the Metropolitan Company whether you operated all the franchises together or all of the franchises owned separately, in neither case
339 would it pay operating expenses?

A. Such portions of the lines as could be operated together would not form the character of lines that would induce travel enough to pay for the running of the cars.

Cross-examination by Mr. COMAN:

Q. Would the line from South ferry to 15th street pay operating expenses if operated independently?

A. No, sir.

Q. Does the fact that J. P. Morgan & Co. occupy a certain building and transact an enormous amount of business in the building affect its market value?

A. The market value of what?

Q. Of the building, the real estate?

A. Does not, in my opinion.

Q. Or its rental value?

A. No.

Q. Is it your opinion that the great wealth which Mr. J. P.

Morgan & Co. accumulate each year in that building should escape from taxation because it is the product of their brains; is that your theory?

Objected to as immaterial.

Objection sustained. Exception.

Q. What is the length of time that these lease- have to run of these various leased lines?

A. In the majority of cases 999 years; there are some few that are for 99 years.

Q. You have no present intention of surrendering those leases, have you, and going back to this chaotic condition that you have been describing in your direct testimony?

A. Depend on the result of this action.

Q. Do you mean that seriously?

A. In a great many of the cases.

By the REFEREE:

Q. I understand you to say it depends on the result of this action in a great many of the cases?

340 A. There are a great many properties—as I stated, we have got to-day 90 miles of horse railroad under lease, not a single mile of it last year anywheres near paid its fixed charges.

Q. Operated by horses?

A. Operated by horses. Every mile of that has to have at least $150,000 a mile of single track expended on to it before it can be made to develop into earning capacity.

By Mr. COMAN:

Q. All that money has been expended, hasn't it?

A. No.

Q. You spoke of the Fulton Street railroad as not now paying operating expenses?

A. I didn't speak of it, but it don't. The Bleecker Street and Fulton Ferry.

Q. What is the reason that doesn't pay operating expenses?

A. It never did.

Q. What is the service over that line?

A. Horse power.

Q Would it pay operating expenses if it had electric equipment?

A. No, sir; it would be impossible to change it to electric operation, it runs through the back streets, back of Broadway, the narrow streets.

Q. You said the Broadway and Seventh Avenue line at the time you took it over had two million dollars' worth of real estate outside of the streets; what did that consist of?

A. It had a full block of property between 50th and 51st street, Sixth and Seventh avenues, New York; it had half a block off of Whitehall street. I can't recollect just the street, business property.

Q. For what purpose was it used; used by the company?

A. Yes, sir; it was bought and buildings erected on to it at a cost of—land and building—of about $750,000, as a power station; it has never been used at all; it stands there to-day, idle.

341 Q. What did you refer to by the $750,000 that was used for the erection of a building?

A. It was used for the purchase of property and the erection of a building for the South Ferry end power station, in the lower part of the city, adjacent to South ferry, on Front street.

Plaintiff's counsel ask that the report of the State Board of Tax Commissioners for 1900, heretofore marked for identification (*supra*, p. 215), be marked specifically "Plaintiff's Exhibit A" for identification. So marked.

Plaintiff's counsel ask that the opinion of Judge Fiero to the State Board of Tax Commissioners, heretofore offered in evidence and excluded, be specifically marked "Plaintiff's Exhibit B" for identification. So marked.

Plaintiff's counsel offer in evidence notice of sale and certificate of sale of Columbus and Ninth Avenue railroad, dated December 30th, 1892. Admitted and marked "Metropolitan Exhibit No. 67."

Also, a similar notice of sale and certificate given and made in case of Lexington Avenue and Pavonia Ferry Railroad Company, and notices and certificates in cases of the other franchises owned by the plaintiff companies which have been sold under chapter 642 of the Laws of 1886, or section 93 of the railroad law.

Also, similar notices and lease in case of other companies of the system.

Such certificates and notices of sale are received in evidence.

Plaintiff's counsel read in evidence chapter 268 of the Laws of 1886, relating to the dissolution of the Broadway Surface Railroad Company.

342 Plaintiff's counsel offer in evidence the deed of the trustees of the Broadway Surface Railroad Company to Daniel S. Lamont and wife, dated September 11th, 1889, consummating the sale at public auction of said railroad and franchise. Also, deed of said Lamont and wife to the Broadway Railroad Company, dated April 8th, 1891. Admitted and marked "Metropolitan Exhibit No. 68."

Plaintiff's counsel also offered in evidence a tabulated statement, showing the organization of companies and chain of title to special franchises of the systems of the Metropolitan Street Railway Company, the Third Avenue Railroad Company, Central Crosstown Company and Union Railway Company of N. Y. City. Admitted and marked "Metropolitan Exhibit No. 69."

Plaintiff's counsel read in evidence a statement showing the organization of the Metropolitan Street Railway Company and system, viz.:

"In 1893, the Houston, West Street & Pavonia Ferry Railroad Co. then controlled the Broadway & Seventh Avenue Railroad Com-

pany, Sixth Avenue Railroad Company, Ninth Avenue Railroad Company, Twenty-third Street Railway Company, Bleecker Street & Fulton Ferry Railroad Company, under lease, and the Chambers Street & Grand Street Ferry Railroad Company, Broadway Railway Company (successor to Broadway Surface Railroad Company) and South Ferry Railroad Company; and the latter of these companies were held by the Houston, West Street & Pavonia Ferry Railroad Company by its ownership of their respective capital stocks.

"The Metropolitan Crosstown Railway Company controlled the Central Park, North & East River Railroad Company, and
343 42nd Street & Grand Street Ferry Railroad Company under lease from them respectively.

"These companies came under control of the Metropolitan Street Railway Company, as follows: The Chambers & Grand Street Ferry Railroad Company was consolidated into the Houston, West Street & Pavonia Ferry Railroad Company on January 30, 1891; the Houston, West Street & Pavonia Ferry Railroad Company, the Broadway Railway Company and the South Ferry Railroad Company were consolidated into the Metropolitan Street Railway Company (No. 1) December 13, 1893. The Metropolitan Crosstown Railway Company, the Lexington Avenue & Pavonia Ferry Railway Company and the Metropolitan Street Railway Company No. 1 were consolidated into the Metropolitan Street Railway Company (No. 2) on May 18, 1894. The Columbus & Ninth Avenue Railroad Company and the Metropolitan Street Railway Company (No. 2) were consolidated into the Metropolitan Street Railway Company (No. 3) on November 13, 1895.

"The Houston, West Street & Pavonia Ferry Railroad system and the Metropolitan Crosstown Railway system above referred to included no other companies, but were owned by Metropolitan Traction Company of New York, which also owned the stock of the Lexington Avenue, Pavonia Ferry and Columbus & Ninth Avenue Railroad Company. The two latter owned franchises but the railroads had not been constructed under them.

"In 1893 all of these companies other than Columbus & Ninth Avenue & Lexington Avenue and Pavonia Ferry were operated by horse power, although the cable construction was nearly completed on the Broadway & Seventh Avenue line. Each company was operated independently and had its own management.

"Subsequent to 1893 the Metropolitan Company acquired under leases the Eighth Avenue Railroad line, the New York &
344 Harlem Railroad City line, the Second Avenue Railroad line, the 34th Street Railroad Company, and by purchase of stock 34th Street Ferry & 11th Avenue Railroad Company, and the Fulton Street Railroad Company.

"The Central Crosstown Railroad Company and the Christopher & Tenth Street Railroad Company are not leased to the Metropolitan system. They have each separate organizations. They are operated in harmony with the Metropolitan Street Railway system. There is no written contract or lease between them."

It is *stipulated* that the successive consolidations of the Metropolitan Street Railway Company, and other companies above referred to were effected under consolidation agreements duly made under the railroad law in such cases made and provided.

Plaintiff's counsel reads in evidence a statement showing the special franchises of the plaintiff companies on January 7, 1900, which were acquired as extensions under section 93 of the railroad law.

345 (PLAINTIFF'S EXHIBIT OF EXTENSIONS.)

Name of company.	Initial streets of franchise.	Date of franchise.	Mileage.
Houston, West St. & Pavonia Ferry Railroad Co.	Ridge & Montgomery streets	October 8, 1892	.45
Chambers & Grand St. Ferry Railroad Co.	Pitt and Grand streets	October 8, 1892	.56
Houston, West St. & Pavonia Ferry Railroad Co.	Lexington avenue	January 6, 1893	.45
Metropolitan Crosstown Railroad Co.	West 3rd street	October 29, 1892	.09
	South Fifth Ave	October 8, 1892	.10
	Broome, Sullivan and Watts streets	October 8, 1892	.47
Lexington Avenue & Pavonia Ferry Railroad Co. (Houston, West St. & Pavonia Ferry Railroad Co.)	Lexington avenue & 116th street	January 6, 1893	12.11
Columbus & Ninth Avenue R. R. Co	106th St., Amsterdam avenue to Columbus avenue	December 30, 1892	.32
	& on Columbus & Ninth avenue	December 30, 1892	4.65
Columbus & Ninth Ave. & Metropolitan St. R'y Co.	109th street & Manhattan avenue	September 19, 1894	.13
	Manhattan avenue, 110th and 116th streets	September 19, 1894	.60
Metropolitan Street Railway Company	Dey & West streets to Broadwayand Chambers street	March 20, 1896	.32
	West Broadway, Chambers and Franklin streets	April 22, 1896	.12
Ninth Avenue	Ninth and Sixth avenues	October 8, 1892	15.10
Broadway & Seventh Avenue	23rd St. from Broadway to 36th St., and Lexington Ave	October 8, 1892	15.16

346 Counsel for plaintiff offer in evidence the following statement:

(PLAINTIFF'S EXHIBIT EXT. FROM MORTGAGE.)

The Metropolitan Street Railway Company executed to the Guaranty Trust Company of New York, as trustee, a general and collateral trust mortgage, dated February 1, 1897, securing an issue of $12,500,000 general mortgage and collateral trust five per cent. gold bonds, dated February 1, 1897, due February 1, 1997, by which mortgage the said railway company conveys to said trust company property, rights and franchises described as follows:

"First. All and singular its property and franchise of every nature and description whatsoever, including all its lands, buildings and real estate in the city of New York and all its railroads, railroad properties and railroad routes now constructed and in operation, and all its franchises to maintain, construct and operate said railroads and to exact fares thereon, including particularly the railways, properties and franchises formerly of the following named companies, with any and all additions thereto and extensions thereof now constructed and in operation, viz.:

1. The Houston, West Street and Pavonia Ferry Railroad Company.
2. The Chambers Street and Grand Street Ferry Railroad Company.
3. The Broadway Railway Company.
4. The South Ferry Railroad Company.
5. The Metropolitan Crosstown Railway Company.
6. The Lexington Avenue and Pavonia Ferry Railroad Company.
7. The Columbus and Ninth Avenue Railroad Company.

Also the line of railway known as the Fort Lee Ferry extension, commencing at the intersection of One hundred and twenty-fifth street and Amsterdam formerly Tenth avenue, running thence westerly through One hundred and twenty-fifth street to the Bou-
347 levard, thence northerly through the Boulevard to One hundred and thirtieth street and thence westerly through One hundred and thirtieth street to a point at or near the Fort Lee ferry, as granted by resolution of common council of the city of New York, adopted December 19, 1893.

Together with all the horses, cars, carriages, tools, chattels, machinery, motors, engines and equipment of every description now used or which may hereafter be used and employed upon said several lines or routes, whether now owned by the railway company, or hereafter to be acquired for use upon or in connection with said several lines of railway.

Second. All the right, title and interest of the railway company in and to the railroads, railroad tracks, railroad routes and franchises, equipment, real estate, contracts and contract rights and other property of every nature and description whatsoever, described and included in the following described instruments of lease, viz.:

1. The lease made by the Broadway and Seventh Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated May 13, 1890, and filed and recorded in the office of the secretary of the State of New York on the 14th day of June, 1890.

2. The lease made by the Eighth Avenue Railroad Company to the Metropolitan Street Railway Company, dated November 23, 1895, and filed and recorded in the office of the secretary of the State of New York on the 28th day of December, 1895 (excepting therefrom the premises known as No. 315 West Fiftieth street).

3. The lease made by the Sixth Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated February 1, 1892, and filed and recorded in the office of the secretary of the State of New York on the 12th day of April, 1892.

348 Excluding all those certain lots of land now owned by the Sixth Avenue Railroad Company, and lying on the easterly side of Lenox avenue, in the city of New York, bounded and described substantially as follows:

Commencing at the intersection of the northerly side of One hundred and fortieth street with the easterly side of Lenox avenue, running thence northerly along the easterly side of Lenox avenue, one hundred and ninety-nine feet and ten inches or thereabouts; thence easterly along the southerly side of One hundred and forty-first street two hundred and twenty-five feet; thence southerly, parallel with the easterly side of Lenox avenue, eighty-eight feet and one inch; thence southwesterly eighteen feet and two inches; thence westerly, along the middle line of the block, or nearly so, one hundred and thirty-five feet and ten (10) inches; thence southerly, parallel with the easterly side of Lenox avenue, ninety-nine feet and eleven (11) inches to the northerly side of One hundred and fortieth street, and thence westerly to the intersection of One hundred and fortieth street and Lenox avenue seventy-five feet to the point or place of beginning.

4. The lease made by the Ninth Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated March 12, 1892, and filed and recorded in the office of the secretary of the State of New York on the 20th day of April, 1892.

Excluding those two certain lots of land now owned by the Ninth Avenue Railroad Company on the westerly side of Amsterdam avenue, in the city of New York, between One hundred and twenty-fifth and One hundred and twenty-sixth streets bounded and described as follows:

Commencing at a point on the westerly side of Amsterdam avenue distant forty-nine feet and eleven inches northerly from the intersection of the northerly side of One hundred and twenty-fifth street and the westerly side of Amsterdam avenue; running thence
349 westerly parallel with the northerly side of One hundred and twenty-fifth street one hundred (100) feet; thence northerly, parallel with the westerly side of Amsterdam avenue fifty (50) feet; thence easterly, parallel with the northerly side of One hundred and

twenty-fifth street one hundred (100) feet; and thence southerly along the westerly side of Amsterdam avenue fifty (50) feet to the point or place of beginning.

5. The lease made between the Central Park, North and East River Railroad Company, the Metropolitan Cross Town Railway Company, and the Houston, West Street and Pavonia Ferry Railroad Company, dated October 14, 1892, and filed and recorded in the office of the secretary of the State of New York, on the 19th day of November, 1892.

6. The lease made by the New York and Harlem Railroad Company to the Metropolitan Street Railway Company, dated June 11, 1896, and filed and recorded in the office of the secretary of the State of New York, on the 16th day of July, 1896.

7. The lease made between the Forty-second Street and Grand Street Ferry Railroad Company, the Metropolitan Crosstown Railway Company, and the Houston, West Street and Pavonia Ferry Railroad Company, dated April 6, 1893, and filed and recorded in the office of the secretary of state of New York, on the 13th day of May, 1893.

8. The lease made by the Twenty-third Street Railway Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated April 25, 1893, and filed and recorded in the office of the secretary of the State of New York, on the 7th day of June, 1893, including the right, title and interest passing by said lease in and to the properties described in the lease made by the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company dated January 10, 1876.

350 Third. All and singular the lots, pieces or parcels of land with all and singular the buildings and improvements thereon, situate, lying and being in the city, county and State of New York, and bounded and described as follows:

(1.) Ninety-sixth street and first avenue.

All that certain block, piece or parcel of land situate, lying and being in the twelfth ward of the city of New York, and bounded and described as follows, viz: Northerly by the middle line of Ninety-sixth street; southerly by the middle line of Ninety-fifth street; westerly by the middle line of First avenue; and easterly by the East or Harlem river. And also, the land under water, and all pre-emptive rights in, upon and under the East or Harlem river, lying in front of the above-described block.

(2.) Avenue C depot property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the eleventh ward of the city of New York, and which, taken together, are bounded and described as follows:

Beginning on the northerly line or side of Eleventh street, distant

one hundred and eighty-three feet easterly from the corner formed by the intersection of the northerly side of Eleventh street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred and three feet three inches to the centre line of the block between Eleventh and Twelfth streets; thence easterly along said centre line of the block and parallel with Eleventh street fifty feet; thence southerly and parallel with Avenue C one hundred and three feet three inches to the northerly side or line of Eleventh street, and thence westerly along the same fifty feet to the point or place of beginning.

351 All that certain lot, piece or parcel of land, with the buildings thereon erected, situate, lying in and being in the eleventh ward in the city of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth street, distant two hundred and thirty-three (233) feet easterly from the northeasterly corner of Tenth street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet and nine inches; thence easterly and parallel with Tenth street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen feet and nine inches; thence westerly and again parallel with Tenth street twenty-five (25) feet to the point or place of beginning.

All that certain piece of land, with the buildings thereon, situate, lying and being in the eleventh ward of the city of New York, on the northerly side of Tenth street, and beginning at a point two hundred and eight feet distant easterly from the northeasterly corner of said Tenth street and Avenue C, and running thence easterly along the northerly side of Tenth street twenty-five feet; thence northerly, on a line parallel with Avenue C, ninety-four feet and nine inches and one-half an inch, to the centre line of the block between Tenth and Eleventh streets; thence westerly on a line parallel with Tenth street twenty-five feet, thence southerly on a line parallel with Avenue C ninety-four feet nine and one-half inches, to Tenth street aforesaid, the place of beginning.

Also six other certain lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and being in the eleventh ward of the said city of New York, and bounded and described as follows: Beginning at a point on the southerly side of Eleventh street, distant one hundred and eight feet easterly

352 from the southeasterly corner of Avenue C and Eleventh street; and running thence easterly and along the southerly side of Eleventh street aforesaid seventy-five feet; thence southerly, and parallel with said Avenue C, one hundred and eighty-nine feet and seven inches, more or less, to the northerly side of Tenth street; thence westerly, and along the northerly side of Tenth street aforesaid, seventy-five feet, and thence northerly and parallel with

said Avenue C, one hundred and eighty-nine feet and seven inches, more or less to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh street, in the eleventh ward of the city of New York, and known and distinguished on a certain map filed by Frederick De Peyster, master in chancery in the office of the register of the city and county of New York, entitled Map of two hundred and forty lots of land situate at Burnt Mill point in the eleventh ward of the city of New York, by the numbers eighty-five (85), eighty-six (86) and are more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh street in said city, distant two hundred and thirty-three feet easterly from the north-easterly corner of Avenue C and Eleventh street, running thence northerly and parallel with Avenue C one hundred and three feet three inches; thence easterly, and parallel with Eleventh street fifty feet; thence southerly and parallel with Avenue C one hundred and three feet three inches to Eleventh street aforesaid, and thence westerly along the same fifty feet to the place of beginning. Also, all those four certain lots, parcels, pieces or parcels of land situate, lying and being in the eleventh ward of the city of New York, bounded and described as follows: Beginning at a point on the southerly side of Eleventh street distant one hundred and eighty-three feet
353 easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C, ninety-four feet (94) nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred feet; thence northerly and parallel with Avenue C ninety-four feet nine inches to the southerly line or side of Eleventh street; thence westerly along the southerly line of Eleventh street one hundred feet to the place of beginning.

(3.) No. 413 East Tenth street.

All that certain lot, piece or parcel of ground, with the building thereon erected, which — on a certain map filed by Frederic De Peyster, master in chancery (with his certificate endorsed thereon, dated February 1st, 1837), in the office of the register for the city and county of New York, entitled "Map of 240 lots of land, situated at Burnt Mill point in the eleventh ward of the city of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), bounded as follows, viz.:

Commencing at a point on the northerly side of Tenth street, distant one hundred and ninety-three feet southeasterly from the northeasterly corner of Avenue C and Tenth street; running thence northeasterly along lot 145 on said map ninety-four feet nine inches to the centre of the block; thence southeasterly along the centre of the block twenty-five feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four feet nine inches to Tenth street, and thence northwesterly along Tenth street twenty-five feet to the point of beginning.

(4.) Lenox avenue and One hundred and sixteenth street.

All those certain lots, pieces or parcels of land, situate, lying and being in the twelfth ward of the city of New York, and which taken together are bounded and described as follows:

354 Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth street with the westerly side of Lenox (formerly Sixth) avenue, running thence northerly, along said westerly line of Lenox avenue two hundred and one feet ten inches to the southerly line of One hundred and seventeenth street; thence westerly, along said southerly line of One hundred and seventeenth street two hundred feet; thence southerly, and parallel with Lenox avenue two hundred and one feet ten inches to the northerly line of One hundred and sixteenth street; thence easterly along said northerly line of One hundred and sixteenth street two hundred feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company of New York, to the Lexington Avenue and Pavonia Ferry Railroad Company by deed bearing date the 18th day of January, 1894, and recorded in the office of the register in the city and county of New York in Block series (conveyances) section 7, Liber 20, at page 456, &c., subject, however to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

(5.) Lexington avenue and Ninety-ninth street.

And, also, all that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the city of New York, bounded and described as follows:

Beginning at the northeasterly corner of Fourth avenue and Ninety-ninth street, running thence northwardly along the easterly line of Fourth avenue two hundred and one feet ten inches to the southerly line of One hundredth street; thence eastwardly along the southerly line of One hundredth street four hundred and five feet; thence southwardly and parallel with Fourth avenue two hundred and one feet ten inches to the northerly line of Ninety-ninth street and thence westwardly along the northerly line of Ninety-

355 ninth street four hundred and five feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company, of New York, to the Lexington Avenue and Pavonia Ferry Railroad Company, by deed bearing date the 15th day of January, 1894, and recorded in the office of the register in the city and county of New York in Block series (conveyances), section 6, Liber 22, at page 157, &c.,

Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

(6.) Lexington building.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the twelfth ward of the city of New York, bounded and described as follows:

Commencing on the northerly side of Twenty-fifth street, at a point distant one hundred and seven feet and six inches (107.6) westerly from the corner formed by the intersection of the northerly line of Twenty-fifth street with the westerly line of Third avenue, and running thence westerly along the northerly line of Twenty-fifth street, one hundred and eighty-seven feet and six inches (187.6), or thereabouts, and thence running northerly and parallel, or nearly so, with the Third avenue one hundred and ninety-seven feet and five inches (197.5) to the southerly side of Twenty-sixth street and thence running easterly along the southerly side of Twenty-sixth street one hundred and eighty-six feet, or thereabouts, and thence running southerly and parallel with the Third avenue ninety-eight feet and nine inches (98.9) to the centre line of the block between Twenty-fifth and Twenty-sixth streets, and thence running easterly along the said centre line of the block six inches (6); thence running southerly and parallel with the Third avenue, ninety-eight feet and nine inches (98.9) to the northerly line of Twenty-fifth street,
356 being the same premises which were heretofore conveyed by the following conveyances, viz.:

By deed of Ruth A. Brown to the Metropolitan Traction Company of New York, recorded in Block series (conveyances), section 3, Liber 30, at page 128, &c.

By deeds of John D. Crimmins to the Metropolitan Traction Company of New York, recorded in Block series (conveyances), section 3, Liber 31, page 57, &c., and in section 3, Liber 21, at page 408, &c., and in section 3, Liber 26, at page 113, &c.

And by deed of Alonzo C. Monson to the Metropolitan Traction Company of New York, recorded in Block series (conveyances), section 3, Liber 29, at page 176, &c.

Subject however to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

(7.) Belt Line repair shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, lying and being in the twenty-second ward of the city of New York, situate on the north side of West Fifty-third street, between the Tenth and Eleventh avenues, and known as lot number 768 on a certain map of John Hopper's estate, filed in the register's office of the city of New York on the 31st day of December, 1864, as map No. 660, and being bounded and described as follows:

Beginning at a point on the northerly side of Fifty-third street distant four hundred and seventy-five (475) feet westwardly from the westerly side of Tenth avenue, and running thence westwardly along said northerly side of Fifty-third street twenty-five (25) feet;

thence northerly on a line parallel with Tenth avenue forty-eight (48) feet three and three-quarters (3¾) inches; thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly
357 side of Fifty-third street, and thence southerly on a line parallel with Tenth avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third street to the point or place of beginning.

Being the same premises conveyed to the Metropolitan Traction Company of New York by Bertha Volkening by deed dated the 30th day of March, 1893, and recorded in the office of the register of the city and county of New York on the 30th day of March, 1893, in Block series (conveyances), section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the twenty-second ward of the city of New York, and bounded and described as follows:

Beginning at a point three hundred feet easterly from the southeasterly corner of the Eleventh avenue and Fifty-fourth street; thence easterly along the line of Fifty-fourth street twenty-five feet; thence southerly parallel with the Eleventh avenue through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred and fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one-quarter (3¼) inches; thence northerly parallel to the Eleventh avenue one hundred and fifty-two (152) feet six and one-quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less.

Being the same premises conveyed by Andrew Doerrschuck and wife to the Metropolitan Traction Company, of New York, by deed dated the 6th day of March, 1893, and recorded on the 8th day of March, 1893, in Block series (conveyances), section 4, Liber 20, page 296.

(8.) Chambers Street leasehold.

358 All the leasehold rights of the railway company in and to all that certain lot, piece or parcel of land situate, lying and being in the seventh ward of the city of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry street with the westerly line of East street, and running thence southerly along the westerly line of East street one hundred feet and three inches; thence westerly on a line parallel (or nearly so) with the southerly line of Cherry street two hundred and forty-five feet six inches; thence northerly on a line parallel (or nearly so) with the westerly line of East street twenty-six feet one inch; thence easterly parallel (or nearly so) with the said line of Cherry street nineteen feet eleven inches; thence northerly parallel (or nearly so) with the said line of East street seventy-five feet to said line of Cherry street; thence easterly along said *laid* last-mentioned line two hundred and twenty-five feet to

the place of beginning, and known by the street number 505 Cherry street.

Also, all the leasehold rights of the railway company in and to all that certain lot, piece or parcel of land situate, lying and being on Cherry street, in said city, immediately adjoining the above-described premises on the westerly side thereof, which said lot is about twenty feet in width in front and rear and seventy-five feet in depth on each side.

(9.) Twenty-fourth Street leasehold.

All the leasehold rights of the railway company in and to

All those ten certain lots of ground situate, lying and being in the sixteenth ward of the city of New York, distinguished on a map of certain lands of the said Clement C. Moore, situate at Greenwich, in the city of New York, recorded in the office of register in and for the city and county of New York in Liber 634 of Conveyances, page
411, by the numbers 905 (nine hundred and five) to 908 (nine
359 hundred and eight), and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one), all inclusive, and bounded together as follows viz: Southeastwardly in front by the Eleventh avenue; southwestwardly by the half distance line, between Twenty-third street and Twenty-fourth street; northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five), and northeastwardly by the said Twenty-fourth street.

Containing together in width along the said Eleventh avenue, and on the northwestwardly side thereof, ninety-eight feet and eight inches, and on the northeastwardly and southwestwardly sides thereof, two hundred and twenty-five feet, be the said several measurements more or less.

Fourth. All the shares and capital stock of certain corporations, described as follows, viz:

1. Fourteen thousand shares of the capital stock of the Broadway and Seventh Avenue Railroad Company of the par value of $100 each.

2. Four thousand shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company, of the par value of $100 each.

3. Three thousand shares of the capital stock of the Central Park, North and East River Railroad Company, of the par value of $100 each.

4. Nine thousand nine hundred shares of the capital stock of the Thirty-fourth Street Cross-town Railway Company, of the par value of $100 each.

Fifth. All and singular the rights, privileges and franchises of the railway company connected with or necessary for the operation of the said several lines of railway hereinbefore described, and all the horse cars, carriages, tools, chattels, machinery, motors, engines and
equipment of every description now used, or which may here-
360 after be used or employed, upon said several lines or routes, whether now owned by the railway company or hereafter to

be acquired for use upon or in connection with the same, together with all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to any of the lands, railways or property hereinbefore described, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the railway company, of, in and to the same and every part and parcel thereof, with the appurtenances.

The aforesaid are the only mortgage and issue of bonds which have been made by said corporation.

It is further *stipulated* that the tax rate for the county of New York for the year of the special franchise assessment for which the certiorari proceedings are brought to review was .0224771.

It is further *stipulated* that a notice transmitted to the relator company, stating that an assessment on its special franchises had been made and that the total amount thereof was $23,270,730, and the State board would meet at its office at Albany on the 10th day of April, 1900, to hear and determine any complaint as to the assessment, was of the following form:

"No. 98.

(Form A, notice of assessment and hearing of complaints.)

Copy.

Office of State Board of Tax Commissioners.

ALBANY, N. Y., *March* 20, 1900.

To Metropolitan Street Railway Co., 621 Broadway, N. Y. city:

You will take notice that under the provisions of the tax
361 law relating to the taxation of public franchises as real property, the State Board of Tax Commissioners has made an assessment upon special franchises constructed, maintained or operated by you, and fixed the total valuation thereof at the sum of $23,270,730; and fixed the valuation thereof in the respective cities, towns and tax districts in which such special franchise is situated, as follows:

City of New York, borough of Manhattan, $—.

You will further take notice that this board will meet at its office in the city of Albany, on the 10th day of April next, at 10 o'clock a. m., to hear and determine any complaint concerning such assessment.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS,
By PETER DEYO, *Secretary.*"

It is also *stipulated* that a notice served upon all the other relator companies whose proceedings are now pending before the referee was similar in form.

The following statement is read in evidence by plaintiff's counsel:

On December 13, 1893, the capital stock of the Metropolitan Street Railway Company was $8,200,000, which company was formed by the consolidation of the Houston, West Street and Pavonia Ferry Railroad Company and the South Ferry Railroad Company, and the Broadway Railroad Company.

On May 18th, 1894, the capital stock of the Metropolitan Street Railway Company was increased to $13,500,000 upon the consolidation into the same of the Metropolitan Crosstown Railway Company and the Lexington Avenue and Pavonia Ferry Railroad Company.

362 On November 13th, 1895, the capital stock of the Metropolitan Street Railway Company was increased to $16,500,000 upon the consolidation into the same of the Columbus and Ninth Avenue Railroad Company.

Subsequently, on July 8th, 1896, the capital stock of said Metropolitan Street Railway Company was increased to $30,000,000.

Subsequently, on August 11th, 1898, the capital stock of said Metropolitan Street Railway Company was increased to $45,000,000.

Subsequently, on August 2d, 1900, the capital stock of said Metropolitan Street Railway Company was increased to $52,000,000. All of this increased stock, over and above $16,500,000, was issued for cash.

Of $12,500,000 of bonds issued by the Metropolitan Street Railway Company all was expended on leased lines, except about $4,000,000, of which there was expended on the Broadway road about $1,000,000 and the balance on car equipment, car-houses and power-houses of the Metropolitan Street Railway Company, and for retiring $500,000 of bonds of the Houston, West St. and Pavonia Ferry R. R. Co., which it assumed on consolidation. The highest price at which these bonds sold after the same were listed on the New York stock exchange at any time up to January 7th, 1900, was $124, on January 27th, 1899; the lowest price $109.75, on October 30th, 1897.

The Broadway Railroad Company at the date of consolidation had outstanding bonds to the amount of $2,500,000, securing mortgage upon its special franchise and other property on Broadway, which bonds are still outstanding and unpaid.

The South Ferry R. R. Co. at the date of consolidation had outstanding bonds to the amount of $350,000, secured by mort-
363 gage upon its special franchise and other property, which are outstanding and unpaid.

The bonds of the Broadway Co. and the South Ferry Co. should be added to the bonded indebtedness of the Metropolitan Co. appearing in Schedule F attached to the return making the bonded indebtedness $24,600,000.

Under the Broadway and Seventh Avenue mortgage, referred to in the note to Schedule F, bonds to the amount of $2,850,000 were reissued to take up at maturity the bonds of the Broadway R. R. Co. of the South Ferry Co. aforesaid.

The stock of the Metropolitan Street Railway Company was first sold on the New York stock exchange as an unlisted security on October 9th, 1897.

The highest quoted price at which the stock of the Metropolitan Street Railway Company sold on the New York stock exchange at any time up to January 7th, 1900, was $269 per share on March 28th, 1899 (the lowest price $99.75 per share on October 15th, 1897).

From the time the stock was placed upon the market, in 1897, there was an increase in value, with occasional fluctuations, until it reached 269, and afterwards decreased to 192, at which price it sold on January 7, 1900.

The highest quoted price at which the 1st mortgage bonds of the Broadway Railroad Company sold at any time up to January 7, 1900, was $119 on December 21, 1898; the lowest price was 89, December 17, 1887.

The highest quoted price at which the 2d mortgage bonds of the Broadway Railroad Company sold at any time up to January 7, 1900, was $107 on December 21, 1898, and the lowest price was $80 on December 17, 1887.

364 The highest quoted price at which the first mortgage bonds of the Lexington Avenue and Pavonia Ferry Railroad Company sold at any time up to January 7, 1900, was $127.12½ on July 31, 1899; the lowest price $114 in July, 1894.

The highest quoted price at which the first mortgage bonds of the Columbus and Ninth Avenue Railroad Company sold at any time up to January 7th, 1900, was $127 on January 15th, 1899; the lowest price $104 in July, 1895.

The following are the transfer stations along the Second, Fourth, Sixth, and Eighth Avenue, and Twenty-third, Twenty-eighth and Twenty-ninth, Thirty-fourth and Fifty-ninth Streets lines:

Second Avenue.

116th street,		14th street,
86th street,		10th street,
59th street,		8th street,
34th street,		Astor place,
28th or 29th street,		Stanton or Houston St.,
23rd street,		Spring street,
17th or 18th street,		Duane or Chambers St.
Houston or Stanton St.,	}	From horse line.
Delancey street,		
Duane or Chambers St.		

Fourth Avenue.

86th street,	14th street,
59th street,	8th street,
34th street,	Astor place,
28th or 29th street,	Houston or Stanton St.,
23rd street,	Spring street,
17th street,	Chambers or Duane St.

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Sixth Avenue.

65th street,
59th St. and 9th Ave.,
59th St. and 8th Ave.,
59th St. and 7th Ave.,
59th St. and Madison avenue,
59th St. and Lexington avenue,
59th St and 2d avenue,
34th street,
28th or 29th street,
14th street.
8th street,
4th street,
Bleecker street,
Houston or Prince St.,
Spring street,
Canal street,
Duane or Chambers St.,
Fulton street.

Eighth Avenue.

116th street,
86th street,
59th street,
34th street,
28th or 29th street,
23rd street,
14th street,
13th street,
Abingdon square,
11th street,
10th or Christopher St.,
Houston or Charlton St.,
Watt street,
W. Broadway,
Duane or Chambers St.,
Fulton street.

Twenty-third Street.

13th avenue south,
9th avenue,
8th avenue,
7th avenue,
4th avenue,
Lexington avenue,
2nd avenue,
Avenue A.

Twenty-eighth and Twenty-ninth Streets.

12th avenue south,
10th avenue,
9th avenue,
8th avenue,
7th avenue,
6th avenue.
Broadway,
4th avenue,
Lexington avenue,
2nd avenue,
1st avenue,

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Thirty-fourth Street.

10th Ave. and 42nd St.,
10th Ave. and 34th St.,
9th avenue,
8th avenue,
7th avenue,
Broadway,
6th avenue,
4th avenue,
Lexington avenue,
2nd avenue,
1st avenue.

Fifty-ninth Street.

1st avenue,
2nd avenue,
Lexington avenue,
Madison avenue,
6th avenue.
7th avenue,
8th avenue,
9th avenue,
10th avenue.

It is *stipulated* in all cases, subject to the same objection as heretofore made by defendants to the same class of testimony and the same ruling and exception, that the total assessed valuation of real estate in the city of New York for the year the taxes of which these certiorari proceedings are brought to review, by counties were, viz:

Name of county.	Assessed value.
New York	$2,178,605,905
Kings	609,822,267
Queens	103,752,600
Richmond	40,264,692

The percentage which the assessed values bore to actual values as fixed by the State Board of Tax Commissioners for said year in said counties were as follows:

Name of county.	Percentage.
New York	67
Kings	68
Queens	80
Richmond	66

367 Plaintiff's counsel offered in evidence in all cases statement, no objection being made by defendant's counsel to the correctness of the facts therein contained, as follows:

That in proceedings heretofore begun in the supreme court to review the assessment fixed on the special franchises of certain companies for the year the taxes of which the present certiorari proceedings have been brought to review, the defendants in the same are the same defendants as in these proceedings, viz: George E. Priest, J. Edgar Leaycraft, Lester F. Stearns, as tax commissioners of the State of New York, and constituting the State board of tax commissioners.

That in the proceedings of The People of the State of New York *ex rel.* New York Telephone Company against The State Board of Tax Commissioners, being one of the proceedings above referred to, findings were made and orders hereby referred to and made part hereof were entered thereon by the court containing the following provision:

It is further adjudged that said assessment of the relator's special franchises as made by the State Board of Tax Commissioners, and entered upon the assessment rolls of the various boroughs of the city of New York for the year 1900, as follows:

"At the sum of two millions, six hundred and fifty thousand, one hundred forty-five ($2,650,145) dollars, in the borough of Manhattan; and two hundred and ninety thousand, seven hundred thirty-eight ($290,738) dollars in the borough of the Bronx; amounting in all to the sum of two million, nine hundred and forty thousand, eight hundred eighty-three ($2,940,883) dollars, is excessive
368 and unequal, and the equalized valuation of said special franchises for the year being and hereby fixed as follows:

"In the borough of Manhattan, the sum of one million, seven hundred seventy-five thousand, five hundred ninety-seven and fifteen one-hundredths ($1,775,597.15) dollars. In the borough of the Bronx, the sum of one hundred and ninety-four thousand, seven hundred and ninety-four and forty-six one-hundredths ($194,794.46) dollars.

"Amounting in all to the sum of one million, nine hundred seventy *thousand, three hundred* ninety-one and sixty-one one-hundredths dollars ($1,970,391.61) to which amount the said assessment is reduced."

That findings have been made and orders confirming the same and reducing assessments have been entered thereon containing provisions of similar tenor in case of other companies, being the companies whose proceedings are above referred to, the names of said companies, and the amounts of said assessments as fixed by the said board, and the amounts of the same as reduced by the court, and the percentage which the reduced assessment constitutes in amount with respect to the original assessment fixed by the State board as of January 8, 1900, being as follows:

369

Name of corporation.	Original special franchise assessment.	Reduced special franchise assessment.	Percentage reduced assessment constitutes of original assessment.	Relation of assessed to actual value as fixed by State Board Tax Com'rs.
Rochester R'y Co.	$2,057,000	$1,234,200.00	.60	.80
Hannacroix Water Co.	14,000	10,000.00	.714	.78
Buffalo Traction Co	463,580	324,506.00	.70	.68
Buffalo Railway Co.	3,378,290	2,364,803.00	.70	.68
Hudson River Telephone Co. (Gloversville)	14,500	10,585.00	.73	.73
(Albany)	148,530	115,853.40	.78	.78
Rochester Gas & Electric Co.	1,751,000	1,050,600.00	.60	.80
Crosstown St. R'y Co.	1,824,675	1,277,272.50	.70	.68
Empire City Sub. Co. (Manhattan)	3,324,682	2,227,536.94	.67	.67
(Bronx)	46,164	30,929.88	.67	.67
N. Y. Telephone Co. (Manhattan)	2,650,145	1,775,597.15	.67	.67
(Bronx)	290,738	194,794.46	.67	.67
N. Y. & N. J. Telephone Co. (Queens)	161,669	129,335.20	.80	.80
(Brooklyn)	764,472	519,840.96	.68	.68
(Richmond)	105,741	69,789.06	.66	.66
Troy Gas Co.	470,500	366,990.00	.78	.78

The amount set forth in the last column of the foregoing statement is the amount as fixed by the State Board of Tax Commissioners as the percentage which the assessed value bears to actual

value in the counties in which the companies' properties above referred to are situated.

Objected to as irrelevant and incompetent, but that no objection is made to the statement on the ground that the facts contained in the same are not true.

Objection sustained. Exception.

(Plaintiff's rest.)

Adjourned to Tuesday, September 17, 1901, at 11 a. m., at the capitol, in the city of Albany, N. Y.

370 ALBANY, N. Y., TUESDAY, *September* 17, 1901.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY
vs.
THE STATE BOARD OF TAX COMMISSIONERS.

Adjourned to Wednesday, September 18, 1901.

ALBANY, N. Y., WEDNESDAY, *Sept.* 18, 1901.

Defendant's counsel offered in evidence the report by the Metropolitan Street Railway Company to the railroad commissioners for the year ending June 30, 1899, found at page 1084, vol. 2, Report 1899.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered in evidence the report by the Metropolitan Street Railway Company to the Railroad Commissioners for the year ending June 30, 1900, found at page 1079, vol. 2, Report 1900.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

371 Defendant's counsel offered in evidence the quarterly reports of the Metropolitan Street Railway Company made to the State Board of Railroad Commissioners for the quarters ending March 31, 1898, and 1899, respectively; for the quarters ending June 30, 1898 and 1899, respectively; for the quarters ending September 30, 1898, and 1899, respectively; for the quarters ending December 31, 1898, and 1899, respectively.

Plaintiff's counsel objected to each of the above reports as immaterial, irrelevant and improper.

Objected to on the further ground that they appear to be reports of the operation of the whole Metropolitan system and not as to any single franchise owned by the Metropolitan road or any one of the leased roads.

Objection overruled. Exception.

The following are copies of the reports:

This report is due not later than six weeks after end of quarter.

State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending March 31st, 1898 and 1899.

1898.

Gross earnings from operation		$2,423,254.91
Operating expenses (excluding all taxes)		1,334,952.59
Net earnings from operation		1,088,302.32
Income from other sources than operation		147,950.07
Gross income from all sources		1,236,252.39

372 Deductions from income, as follows:

Interest on funded debt		$107,500.00	
Taxes....	On property used in operation of road	49,640.95	
	On earnings and capital stock	41,141.57	
	Other than above	51,147.94	
Rentals		562,863.33	812,293.97
Net income from all sources			423,950.60
Net income as previously reported, for preceding quarters in fiscal year			920,787.72

Operating cost 55.09 per cent. of earnings (excluding all taxes).

Operating cost 60.95 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

1899.

Gross earning from operation		$3,849,904.55
Operating expenses (excluding all taxes)		1,447,636.99
Net earnings from operation		1,402,267.56
Income from other sources than operation		173,699.44
Gross income from all sources		1,575,967.00

Deductions from income, as follows:

Interest on funded debt			263,750.00
Taxes....	On property used in operation of roads	103,566.87	
	On earnings and capital stock.	49,913.82	
	Other than above	1,494.75	
Rentals		649,690.00	1,068,415.44
Net income from all sources			507,551.56
Net income as previously reported, for preceding quarters in fiscal year			1,279,118.79

373 Operating cost 50.80 per cent. of earnings (excluding all taxes).

Operating cost 56.23 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

General Balance Sheet.

March 31, 1899.

Assets.

Cost of road and equipment	$33,970,285.47
Stocks and bonds of other companies (due by leased lines for improvements)	14,730,210.80
Other permanent investments	1,582,775.75
Accrued interest, bills receivable	1,800.00
Supplies on hand	220,350.40
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	2,016,960.18
Prepaid taxes	
Prepaid insurance	
New construction	14,768,637.58
Office furniture	15,232.34
Profit and loss (deficiency)	
	$67,306,252.52

Liabilities.

Capital stock, common	$39,937,700.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	2,456,736.67
Interest on funded debt due and accrued	137,524.99
374 Rentals due and accrued	316,976.66
Dividends unpaid	
Coupons due, not presented	
Due for wages	
Due for supplies	
Due companies and individuals (on open account)	1,226,821.35
Profit and loss (surplus)	1,480,492.85
	$67,306,252.52

D. C. Moorhead, being duly sworn, deposes and says that he is auditor of the Metropolitan Street Railway Company; that the foregoing quarterly statement and general balance sheet are true and correct to the best of his knowledge and belief.

D. C. MOOREHEAD, *Auditor.*

Address, 621 Broadway, N. Y. city.

Sworn to before me, this twenty-fifth day of May, 1899.

L. A. EMANUEL,
Notary Public, N. Y. Co.

375 This report is due not later than six weeks after end of quarter.

State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending June 30th, 1898 and 1899.

1898.

Gross earnings from operation		$2,913,849.76
Operating expenses (excluding all taxes)		1,542,363.08
Net earnings from operation		1,371,486.68
Income from other sources than operation		184,043.64
Gross income from all sources		1,555,530.32
Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes—On property used in operation of road	52,375.20	
Taxes—On earning and capital stock	49,601.96	
Taxes—Other than above	51,789.09	
Rentals	637,189.98	1,054,706.23
Net income from all sources		500,824.09
Net income as previously reported, for preceding quarters in fiscal year		1,344,746.32

Operating cost 52.93 per cent. of earnings (excluding all taxes).

Operating cost 58.21 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings of capital stock).

1899.

Gross earnings from operation	$3,450,247.23
Operating expenses (excluding all taxes)	1,666,585.83
Net earnings from operation	1,783,661.40
Income from other sources than operation	147,542.09
Gross income from all sources	1,931,203.49

376 Deductions from income, as follows:

Interest on funded debt		$263,750.00	
Taxes	On property used in operation of road	103,586.87	
	On earnings and capital stock	60,296.36	
	Other than above	1,494.75	
Rentals		649,690.00	1,078,817.98
Net income from all sources			852,385.51
Net income as previously reported for preceding quarters in fiscal year			1,786,670.35

Operating cost 48.30 per cent. of earnings (excluding all taxes).

Operating cost 53.10 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings of capital stock).

General Balance Sheet.

June 30, 1899.

Assets.

Cost of road and equipment	$35,255,379.69
Stocks and bonds of other companies	14,160,572.35
New construction on lines owned and leased to be distributed	
Other permanent investments	14,297,105.09
Accrued interest	
Supplies on hand	221,421.64
Due by agents of this Co. on account of traffic	
Improvements, add. and bett. charged to leased lines	3,276,064.82
Open accounts	265,667.27
Cash on hand	737,065.83
Bills receivable	1,800.00
Prepaid insurance	
Office furniture	15,292.42
Profit and loss (deficiency)	
	$68,230,369.11

377 Liabilities.

Capital stock, common	$39,938,500.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	2,406,736.67
Interested on funded debt due and accrued	401,274.99
Rentals and taxes accrued	591,618.27
Dividends unpaid	698,923.75
Coupons due, not presented	

Open accounts	135,294.44
Due for supplies	
Due companies and individuals (on open accounts)	502,374.36
Profit and loss (surplus)	1,805,646.63
	$68,230,369.11

D. C. Moorehead, being duly sworn, deposes and says that he is auditor of the —— Company; that the foregoing quarterly statement and general balance sheet are true and correct to the best of his knowledge and belief.

D. C. MOOREHEAD.

Address, 621 Broadway, N. Y. city.

Sworn to before me, this 9th day of September, 1890.

AMBROSE F. McCABE,
Notary Public, N. Y. County.

378 This report is due not later than six weeks after end of quarter.

State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending September 30th, 1898 *and* 1899.

1898.

Gross earnings from operation		$2,907,562.09
Operating expenses (excluding all taxes)		1,466,640.83
Net earnings from operation		1,440,921.26
Income from other sources than operation		181,736.98
Gross income from all sources		1,622,658.24
Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes—On property used in operation of road	105,792.11	
Taxes—On earnings and capital stock	50,174.11	
Taxes—Other than above	1,442.75	
Rentals	649,690.00	1,070,848.97
Net income from all sources		551,809.27
Net income as previously reported, for preceding quarters in fiscal year		

Operating cost 50.44 per cent. of earnings (excluding all taxes).

Operating cost 55.85 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

1899.

Gross earnings from operation		$3,338,262.30
Operating expenses (excluding all taxes)		1,621,014.45
Net earnings from operation		1,717,247.85
Income from other sources other than operation		157,626.06
Gross income from all sources		1,874,873.91
379 Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes... On property used in operation of road	104,539.42	
Taxes... On earnings and capital stock	59,913.54	
Taxes... Other than above	1,494.75	
Rentals	653,440.00	1,083,137.71
Net income from all sources		791,736.20
Net income as previously reported, for preceding quarters in fiscal year		

Operating cost 48.56 per cent. of earnings (excluding all taxes).

Operating cost 53.53 per cent of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

General Balance Sheet.

September 30, 1899.

Assets.

Cost of road and equipment	$35,260,826.21
Stocks and bonds of other companies	14,142,172.35
New construction on lines owned and leased, to be distributed	16,197,213.88
Accrued interest	
Supplies on hand	153,500.11
Due by agents of this Co. on account of traffic	
Improvements, add. and bett. charged to leased lines	3,276,064.82
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	1,596,926.19
Prepaid taxes, bills receivable	5,800.00
Prepaid insurance	
Office furniture	15,292.42
Profit and loss (deficiency)	
	$70,647,795.98

380 Liabilities.

Capital stock, common	$44,915,900.00
Capital stock, preferred	
Funded debt	21,750,000.00
Bills payable	506,736.67
Interest on funded debt accrued	137,524.99
Rentals due and accrued	322,601.66
Dividends unpaid	786,028.25
Coupons due, not presented	
Due for wages	
Due for supplies	
Due companies and individuals (on open accounts)	496,233.73
Profit and loss (surplus)	1,732,770.68
	$70,647,795.98

D. C. Moorehead, being duly sworn, deposes and says that he is auditor of the —— Company; that the foregoing quarterly statement and general balance sheets are true and correct to the best of his knowledge and belief. D. C. MOOREHEAD

Address, 621 Broadway, N. Y. city.

Sworn to before me, this 27th day of November, 1899.
AMBROSE F. McCABE,
Notary Public, New York County.

381 This report is due not later than six weeks after end of quarter.

State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending December 31*st*, 1898 *and* 1899.

1898.

Gross earnings from operation		$3,092,756.22
Operating expenses (excluding all taxes)		1,467,579.79
Net earnings from operation		1,625,176.43
Income from other sources than operation		175,190.39
Gross income from all sources		1,800,366.82
Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes: On property used in operation of road	103,566.87	
Taxes: On earnings and capital stock	54,555.68	
Taxes: Other than above	1,494.75	
Rentals	649,690.00	1,073,057.30
Net income from all sources		727,309.52
Net income as previously reported, for preceding quarters in fiscal year		551,809.27

Operating cost 47.45 per cent. of earnings (excluding all taxes).
Operating cost 52.61 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

1899.

Gross earnings from operation		$3,565,682.04
Operating expenses (excluding all taxes)		1,758,020.88
Net earnings from operation		1,807,661.16
Income from other sources than operation		194,399.91
Gross income from all sources		2,002,061.07
382 Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes: On property used in operation of road	04,384.40	
Taxes: On earnings and capital stock	65,857.72	
Taxes: Other than above	1,238.22	
Rentals	655,315.00	1,090,545.34
Net income from all sources		911,515.73
Net income as previously reported, for preceding quarters in fiscal year		791,736.20

Operating cost 49.30 per cent. of earnings (excluding all taxes).
Operating cost 54.08 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

General Balance Sheet.

December 31, 1899.

Assets.

Cost of road and equipment	$35,269,327.82
Stocks and bonds of other companies	14,542,172.35
New construction on lines owned and leased, to be distributed	18,310,072.12
Accrued interest	
Supplies on hand	177,350.84
Improvements, add. and bett. charged to leased lines	3,276,064.82
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	1,996,591.06
Bills receivable	67,737.46
Prepaid insurance	
Office furniture	18,102.67
Profit and loss (deficiency)	
	$73,657,419.14

383 Liabilities.

Capital stock, common	$44,928,900.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	3,206,736.67
Interest on funded debt accrued	401,274.99
Rentals due and accrued	149,911.66
Dividends unpaid	786,255.75
Coupons due, not presented	
Due for wages	
Due for supplies	
Due companies and individuals (on open accounts)	709,163.30
Profit and loss (surplus)	1,725,176.77
	$73,657,419.14

D. C. Moorehead, being duly sworn, deposes and says that he is auditor of the Metropolitan Street Railway Company; that the foregoing quarterly statement and general balance sheet are true and correct to the best of his knowledge and belief.

D. C. MOOREHEAD.

Address, 621 Broadway, N. Y. city.

Sworn to before me this 10th day of February, 1900.

AMBROSE F. McCABE,
Notary Public, New York County.

384 Defendant's counsel offered in evidence the report of the Metropolitan Street Railway Company to the State Board of Tax Commissioners for the year ending June 30, 1900; also the supplemental reports annexed thereto.

Objected to on the ground it is a report made since this assessment was made, and as immaterial and incompetent.

Objection overruled. Exception.

Marked Defendant's Exhibit No. 1, September 18, 1901.—J. M. R.

The following is a copy of the same:

385 (DEF'TS' EX. NO. 1, 1900, REP. TO ST. TAX BD.)

REPORT

OF THE

METROPOLITAN STREET RAILWAY COMPANY

TO THE

STATE BOARD OF TAX COMMISSIONERS

OF THE

STATE OF NEW YORK

FOR THE

YEAR ENDING JUNE 30, 1900.

386 Office of the State Board of Tax Commis-ioners.

ALBANY, ——, —.

SIR: The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the report of your company required by chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before ——.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

Extract from Law Relating to Taxation of Special Franchises.

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets highways or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches

and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. *A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation* shall be subject to a special franchise tax.

387 SCHEDULE A.

Title of company—Metropolitan Street Railway Company.....
General offices at—621 Broadway, New York city.....
Date of close of fiscal year—June 30th.....
For information concerning this report address—Charles E. Warren,
....Secretary.

Officers of the company with address.

President—H. H. Vreeland.....
.....621 Broadway.....
Vice-president—D. B. Hasbrouck.....
.....do.....
Secretary—Charles B. Warren.....
.....do.....
Treasurer—H. T. Beattie.....
.....do.....
Assistant to general manager—Oren Root, Jr.....
.....do.....

388 SCHEDULE B.

Description of special franchise showing streets, highways or public places possessed or rights enjoyed and in what village, tax district or districts same is located, and statement of maps accompanying this report.

NOTE.—*If this information was given in 1899 report and map filed, state such fact, giving only additional grants since June 30, 1899.*

.....

.....Report and map filed in 1899.....

.....

.....

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "special franchise."

389 SCHEDULE C.

Copy of special law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise or under which the same is enjoyed."

NOTE.—*If this information was given in 1899 report and copies filed state such fact, giving only additional rights since June 30, 1899.*

.....

.....Report and map filed in 1899.....

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Statement of Assets and Liabilities June 30, 1899.

Assets.	Amount.	Liabilities.	Amount.
Cost of real estate and improvements } Cost of equipment	$35,700,473 17	Capital stock	$44,960,900 00
Stock and bonds of other companies	21,644,457 21	Funded debt	21,750,000 00
Material and supplies	103,778 68	Accounts and bills payable	9,131,017 25
Accounts and bills receivable	271,886 52	Interest on funded debt due and accrued	401,274 99
Cash on hand	12,489,276 38	Rentals and taxes accrued	621,830 32
Additions and betterments on leased lines	2,776,064 82	Dividends unpaid	786,815 75
New construction on lines owned and leased to be distributed	18,068,359 30	3rd Ave. R. R. Co. lessor construction a/c.	11,419,833 99
Open accounts	37,291 39		
Profit and loss		Profit and loss	2,019,915 17
Total	$91,091,587 47	Total	$91,091,587 47

In addition to the funded debt specified in the above schedule, the corporation is primarily liable for the payment of the bonds secured by the consolidated mortgage of the Broadway and Seventh Avenue Railroad Company, under the consolidated agreement and the provisions and terms of the lease of the Broadway and Seventh Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company.

SCHEDULE E.

Capital Stock.

	No. shares.	Total par value.	Dividends declared during year.		Market value during year.		
			Rate.	When payable.	Highest.	Lowest.	Present.
Common issued	449,609	44,960,900	7%	Quarterly.	226	144	147
Preferred issued							
Total	449,609	44,960,900	7%				

SCHEDULE F.

Funded Debt.

Designation of lien.	Date.	Maturity.	Amount outstanding.	Interest.		Market value during year.		
				Rate.	When payable.	Highest.	Lowest.	Present.
1st mtg. bonds of Met. Crosstown Ry. Co.	April 1, 1890	30 years.	$600,000	5%	Ap'l & Oct.	No	sales.	114
2d mtg. bonds of Met. Crosstown Ry. Co.	May 1, 1890	10 "	300,000	"	May & Nov.	No	sales.	100
1st mtg. Lex. Ave. & Pav. Fy. R. R. Co.	Aug. 24, 1893	100 "	5,000,000	"	M'ch & Sept.	126	120	124
1st mtg. Col. & 9th Ave. Ry. Co.	" " "	100 "	3,000,000	"	" " "	127	120	124
Gen'l Co. tr. & mtg. bonds M. S. Ry. Co.	Aug., 1897	100 "	12,500,000	"	Feb. & Aug.	124	113	120
1st mtg. bonds So. Fy. R. R. Co.	Ap'l 1, 1889	30 "	350,000	"	Ap'l & Oct.	No	sales.	114
			$21,750,000					

392 SCHEDULE G.

Statement of Receipts and Disbursements for Year Ending June 30, 1899.

Receipts.	Amount.
From actual operation	$13,785,083.94
Interest and dividends	394,315.06
Rentals	190,685.44
Advertising	43,300.00
Other sources	
Sales of stock	5,022,400.00
Sales of bonds	1,136,405.51
Bills payable	7,850,000.00
3rd Ave. R. R. Co. lessor const. a/c	11,419,833.99
Open a/c const.	83,684.70
Cash on hand, June 30, 1899	737,065.83
Deficit	
Total	$40,662,774.47

393 SCHEDULE G.

Disbursements.			Amount.
Salaries of general officers			$94,143.30
Salaries of clerks and office expenses			74,815.63
Law expenses			306,742.16
Maintenance			1,421,039.54
Reconstruction			
Other operating expenses			4,734,513.03
New construction (extension)	In streets		6,294,540.27
	Outside streets		2,599,285.00
Rentals	Funded debt	$1,055,000.00	1,154,443.23
	Other	99,443 23	
Interest paid			
Taxes on capital stock and earnings paid comptroller			
Taxes on real estate in this State			141,148.33
Taxes on personal estate in this State			61,890.81
Taxes on property in other States			
Payments covered by sec. 46, tax law.	Percentage on gross earnings paid municipality		76,483.19
	Other items		484,083.22
Dividends paid 7 per cent. common stock			3,057,999.00
Dividends paid — per cent. preferred stock			
Loans			270,086.52
Stocks and bonds of other companies			7,402,284.86
Amount paid for new street paving			
Surplus			12,489,276.38
Total			$40,662,774.47

SCHEDULE K.

Statement of Cost to Reproduce New Property in Streets, Highways, etc., Value Less Depreciation.

Name of each township and city wherein located and wards in city where different tax rates prevail.	Present value of property in streets, highways and public places on basis of cost of reproduction. (New.)	Present value of property in streets, highways and public places. (Allowing depreciation.)	Present value of property outside streets, highways and public places on basis of cost of reproduction. (New.)
Manhattan borough	$5,500,000.00	$4,675,000.00	$5,057,000.00
			403,203.21
City of New York	597,160.32	597,160.32	29,995.26
			431,066.15
Total	$6,097,160.32	$5,272,160.32	$5,921,264.62

This includes cost of power houses.

SCHEDULE K.

And Same Outside with Assessments in Each Tax District.

Present value of property outside streets, highways and public places. (Allowing depreciation.)	Assessment of real estate in streets, highways, etc., in 1900.	Assessment of real estate outside streets, highways, etc., in 1900.	Remarks.
$4,737,011.70	.....	$3,711,800.00	

396 SCHEDULE L.

Detailed Statement of Shares of Stock Actually Owned in Other Corporations which are Taxable on Their Capital Stock, and All Other Nontaxable Securities Owned.

Description.	Amount.
34 shares L. I. Fertilizing Co., 23rd street	$3,400.00
61 " " " " Broadway	6,100.00
50 " " " " Belt	5,000.00
25 " " " " 42nd street	2,500.00
6 bonds Bleecker Street, 23rd street	6,723.00
100 shares " " 23rd street	2,500.00
645 Fulton Street Construction Co. stock, 14,062 shares B'way & 7th Av. R. R. Co. stock, 31 " 23rd Street Railway stock, 50 " 8th Ave. R. R. stock, 2,000 " City Railway Improvement Co. stock, $14,000 bonds City Ry. Improvement Co., 15,000 shares 28th & 29th St. R. R. Co. stock, 5,000 " Fulton Street Railway Co. stock, 2,637 " North & East River Ry. stock, 150 " North End St. Ry. stock,	7,076,112.41
10,000 shares 34th St. C. T. Ry. Co. capital stock	2,000,000.00
4,000 " 42nd St. & Grand St. Ferry Co. cap. stock	1,440,000.00
3,000 " C. P. & N. & E. R. R. R. Co. cap. stock	540,000.00
1,570 shares 2nd Ave. R. R. Co. cap. stock	416,312.43
4,615 " Central Crosstown R. R. Co. cap. stock	1,465,604.51
369 " C. P. N. & E. R. R. R. Co. stock	66,420.00
430 " 42nd St. & Grand St. Fy. Co. stock	150,500.00
600 2nd mortgage bonds Met. Crosstown $500 ea.	300,000.00
2 1st mortgage bonds B'way Surface $1000 ea	2,000.00
19,395 shares American Air Power Co. stock	659,000.00
131 debenture bonds 42nd St. M. & St. N. Ave. shares 3rd Ave. R. R. Co.	6,574,284.86
stocks and bonds Jerome Park Ry. Co.	100,000.00
shares Electric Storage Battery	828,000.00
Total	$21,644,457.21

SCHEDULE H.

Statement in Detail of Rentals Paid.

Name of lessor.	Annual rental paid by lessee.	Portion used for payment of interest on debt of lessor.	Portion used for payment of dividends on capital stock of lessor.
Broadway & 7th Ave. R. R. Co.	$835,000	$625,000	$210,000
			2,500*
New York & Harlem R. R. Co.	352,500		350,000
			5,000*
Sixth Avenue R. R. Co.	145,000		140,000
			5,000*
Eighth " "	215,000	60,000	150,000
			2,500*
Ninth " "	66,500		64,000
Twenty-third St. R. R. Co., including Bleecker St. & Fulton Ferry R. R. Co.	182,500	61,500	121,500
Forty-second St. & Grand St. Ferry R'way Co.	148,800	14,160	134,640
Second Avenue R. R. Co.	438,418.32	289,458.32	148,960
Central Park N. & E. River R. R. Co.	246,000	84,000	162,000
Total amount of annual rental	$2,629,718.32	$1,133,618.32	$1,496,100

*Paid for organization expenses.

SCHEDULE J.

Statement in Detail of Rentals Received.

Name of lessee.	The annual amount.	

398 SCHEDULE M.

Details of Roads Owned and Leased.

Name of road.	From	To	Miles owned.	Miles leased.
Met. St. R'way Co.	As per typewritten statement		9.35	Electric.
" "	" " "		17.98	Cable.
" "	" " "		20.16	Horse.
Leased lines	" " "	Electric		72.57
" "	" " "	Cable		6.12
" "	" " "	Horse		68.59
		Total mileage	47.49	147.28

This schedule is applicable only to railroad corporations.

399 & 400 The accompanying blanks are an integral part of this report. A separate blank should be used for *each township, city, and for each ward in a city where the ward rates differ.* Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The law requires that every report made under this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK, } ss:
County of New York, }

Charles E. Warren, secretary of the Metropolitan Street Railway Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1900, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

[L. S.] CHARLES E. WARREN, *Secretary.*

Subscribed and sworn to before me, this 18th day of December, 1900.

DAN'L D. PATTERSON,
Notary Public, New York County, N. Y.

401 Form A–5.

Tax district ——.

NOTE.—Use one of these forms for each tax district.

Surface
Street railroads.
Animal power.
Cable conduit.
Conduit electric.
Electric overhead.
Other powers.

REPORT

OF THE

METROPOLITAN STREET RAILWAY COMPANY

OF

TANGIBLE REAL PROPERTY

Located in, upon, under, or above streets, highways, and public places.

☞ Pursuant to the provisions of section 43, chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1900.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid or erected prior to June 30, 1900.									Laid or erected June 30 to Nov. 1, 1900.						
Conductors not in subway, exclusive of trolley wire.	Insulated conductors in subway.			Use these columns for overhead and underground conductors.		Third rail system.			Conductors not in subway, exclusive of trolley wire.	Use this column for overhead and underground conductors.	Insulated conductors in subway.			Third rail system.	
Miles.	Miles.	Character of insulation.	Size.	Size.	Age.	Miles.	Weight per yard.	Age.	Miles.	Size.	Miles.	Character of insulation.	Pressure.	Miles.	Weight per yard.
	34.16	.....	Triple 0000 lead covered cable.												

Value reproduced (new) .... $

Present value (allowing depreciation)..... $266,950

Electric Railway, Overhead Construction.

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

	Miles erected prior to June 30, 1900.					Poles.			Miles erected June 30 to Nov. 1, 1900.			
	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.	Age.	Average number per mile.	Height.	General description.	Single track.	Double track.	Single or double trolley wire.	Size of trolley wire.
Bracket cons..... Wooden poles												
Bracket cons..... Iron poles												
Span wire cons..... Wooden poles												
Span wire cons . ... Iron poles												

Value reproduced (new) ..... $.....
Present value (allowing depreciation)..... ..... $.....

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Laid prior to June 30, 1900.							Laid June 30 to Nov. 1, 1900.				
Description of subway.			Kind of paving and ballast.	Manholes.		Age.	Description of subway.			Number of manholes.	Kind of paving and ballast.
Number of ducts.	Length (in feet) of subway.	Type of ducts.		Number.	Size.		Number of ducts.	Length (in feet) of subway.	Type of ducts.		
1 48	2,482	Cement & tile..	Stone	22			1				
2 24	475	Cement	"	2			2				
3 24											
48	1,373	Cement & tile..	Asphalt	13			3				
4 48	3,062	" " ..	Stone	30			4				
5 24	264	Tile	"	2			5				
6 24	475	Cement	"	4			6				
7 24	528	Tile	Asphalt	5			7				
8 4	2,957	Cement	Stone	15			8				
9 4	3,590	"	"	18			9				
5											
17	2,006	"	McAdam	10							
17											
22	2,218	"	"	11							
21	3,274	"	"	17							
10	2,746	"	"	14							
12	686	"	Asphalt								

Value reproduced (new) ..... $.....
Present value (allowing depreciation) $76,013

Report Only on Property Located in, upon, under, or above Streets, Highways, and Public Places.

Motive power.	Laid prior to June 30, 1900. Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Rails. When laid.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.	Laid June 30 to Nov. 1, 1900. Miles measured as single track.	Rails. Section.	Rails. Weight per yard.	Ties. Number per mile.	Ties. Kind and size.	Kind of paving and ballast.
Cable	5.52	7" girder.	91 lbs	1893			Stone						
"	12.45	" "	85 to 91 lbs.	1895			Stone & asphalt						
Electric	2.73	9" "	109 "	1898			Stone						
"	.10	" "	" "	"			Asphalt						
"	2.50	7" "	85 "	1896			Stone						
"	3.70	" "	91 "	"			Stone & asphalt						
"	.32	9" "	109 "	1898			Asphalt						
Horse	4.91	Tram	47 "	Before 1894			Stone						
"	4.39	Girder	60 "	" "			"						
		Tram	47 "	" 1895									
"	2.19	Girder	60 "	" 1894			"						
"	7.28	Tram	47 "	" "			Stone & asphalt						
"	1.01	"	" "	" "			" "						
"	.14	"	" "	" "			Stone						
"	.24	"	" "	" "			Stone & asphalt						

Give description, dimensions and age of all bridges, culverts, and trestles.

Value reproduced (new) ..... $.....
Present value (allowing depreciation) $5,308,233

406 STATE OF NEW YORK, } ss.:
County of New York, }

Charles E. Warren, secretary of the Metropolitan Street Railway Co., being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

CHARLES E. WARREN.

Subscribed and sworn to before me, this 18th day of December, 1900.

DAN'L W. PATTERSON,
Notary Public, N. Y. County.

407 The following papers were attached to the report: Dictated by J. H. E.

DECEMBER 21, 1900.

Metropolitan Street Railway Company, Charles E. Warren, secretary, 621 Broadway, New York city.

DEAR SIR: In your report received at this office December 19th, 1900, you fail to give any value for reconstruction of your line during the year ending June 30th, 1900.

You give for the item of new construction $6,294,540.27. From this item you will please separate the amount for the Metropolitan street railway alone, and then give separate reports for the amounts expended in extensions on each of the other lines in their separate reports.

In form A–5 you have failed to give us the value of the property in the streets reproduced new. Please explain how you arrive at the value allowing depreciation without knowing what the property would be worth new.

In Schedule L. you fail to state the value of tangible personal property, materials, supplies, &c., also the total assessment of personal property and as to whether you are contesting such personal assessment.

In Schedule K. you have not given us the amount of franchise assessment made by this board and returned to you by the local board.

Please furnish this information in the form of a sworn affidavit, to be attached to your report, before January 1st, 1901.

Yours very truly, —— ——, *Secretary.*

M. F.

2883. NEW YORK, *Dec. 29th*, 1900.

Peter Deyo, Esq., secretary State Board of Tax Commissioners, Albany, N. Y.

DEAR SIR: In reply to yours of Dec. 21st—relative to re-
408 port of Metropolitan Street Railway Company, I beg to advise as follows:

"Value for reconstruction of line during the year ending June 30th, 1900"—I fail to find in blanks sent us any question requesting this information.

In the form A. 5—where we give various items laid prior to June 30th, 1900—I have given the cost for the entire period beginning with the primary construction.

Value of reconstruction although for the year is answered as herewith: Item for new construction $6,294,540.27 is distributed as follows:

Houston St. sub. sta...	105.93
23rd St. sub. sta	593.72
32nd St. sub. sta	1,876.69
50th St. sub. sta	182,096.23
50th St. car house	4,846.74
4th Ave	210,969.02
Front St. sub. sta	66,089.50
6th Ave	117,734.04
8th Ave	137,339.14
Belt	614,005.13
C. Elec	597,160.32
26th St	3,777.32
116th St	168,086.68
96th St	1,614,238.90
23rd St	260,058.31
42nd St	152,026.64
	4,131,004.31
Car equipment	532,452.70
Gen'l a ces—not yet distributed	1,631,083.26
	6,294,540.27

The charges against the various divisions in cash expended for their various accounts and for which the Met. St. R'y Co. has not yet been reimbursed. It would not, therefore, be proper to include these charges in the various reports under Schedule G.

Form A. 5—Value of property in streets new is as follows:

Elect. R'y cond'rs	311,058.82
Subways	89,427.05
Track	6,244,980.00

409 In reference to value of property depreciated, statement asks for "value reproduced (new)," which must necessarily be an estimated figure—"value of property depreciated," estimated at 85% of original cost.

Schedule L.—Value of tangible personal property..... $3,878,571.07
Total assessment of personal property..... 10,621,789.00

(We are contesting the personal assessment.)

Schedule K.—Franchise assessment made by your board..... 18,377.911

Yours truly, CHARLES E. WARREN, *Secretary.*

STATE OF NEW YORK, } ss:
County of New York, }

Charles E. Warren, secretary of the Metropolitan Street Railway Company, being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company, and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

CHARLES E. WARREN.

Subscribed and sworn to before me this 31st day of December, 1900.

JAMES B. CAUTHERS,
Notary Public.

410 3857 NEW YORK, *February 12th*, 1901.

Peter Deyo, Esq., secretary State Board of Tax Commissioners, Albany, N. Y.

DEAR SIR: In reply to your letter of the 7th inst., would say that the gross earnings of the Harlem railroad (city line) for the year ending June 30th, 1900, were $2,131,431.60. The amount expended upon reconstruction and new construction from June 30, 1899, to June 30, 1900, was $214,540.72 and from June 30, 1899, to November 1, 1900, including the last amount was $226,264.24.

Yours truly, D. C. MOOREHEAD, *Auditor.*

To the State Board of Tax Commissioners:

The Metropolitan Street Railway Company hereby complains of the assessment made by the State Board of Tax Commissioners upon the franchise, rights and permission owned by it to construct, maintain and operate a railroad or railroads on the surface of streets in the borough of Manhattan, in the city of New York, and specifies

the following respects in which the assessment complained of is incorrect:

First. The said assessment is illegal for the reason that the State Board of Tax Commissioners have no authority in law to assess or to fix and determine the valuation for the purpose of taxation of the franchise, rights or permission to operate a railroad upon the surface of streets in the city of New York, in that the statute, viz.: chapter 712 of the Laws of 1899, as amended by chapter 254 of the Laws of 1900, which your petitioner is advised the State Board of Tax Commissioners claim confers upon it the power and authority to
411 make such assessment and fix and determine the valuation of such franchise, rights and permissions, is in violation of the constitution of the State of New York, and is void.

Second. That the said assessment made by the State Board of Tax Commissioners upon the franchise, rights and permission owned by your petitioner to construct, maintain and operate railroads upon the surface of streets in the city of New York is illegal and void for the reason that the statute of the State, viz.: chapter 712 of the Laws—1899, as amended by chapter 254 of the Laws of 1900, which the said Board of Tax Commissioners claim confers upon it the right, power and authority to act in the premises, and to fix and determine the valuation of such franchise, rights and permission, prescribes no rule for valuation of such franchise, rights and permission, and is for that reason illegal and void.

Third. That the valuation of the franchise, rights and permission as aforesaid, owned by the Metropolitan Street Railway Company, as fixed and determined by said Board of Tax Commissioners at the sum of eighteen million one hundred and seventy seven thousand and nine hundred and seventy five dollars, is grossly excessive and is an over-valuation, and for that reason said assessment fixed and determined by said board is erroneous. That the extent of such over-valuation is eighteen millions of dollars.

Fourth. That the said assessment of the valuation of the franchise, rights and permission owned by the Metropolitan Street Railway Company fixed and determined by said board is unequal in that it has been made at a higher proportion of valuation than that of other special franchises of the same character within the city of New York, to wit: at a higher proportionate valuation than the franchise, rights and permission to construct, maintain and operate railroads on the surface of the streets owned by other railroad corporations in the city of New York.

412 Fifth. That the said assessment and valuation of the franchise, rights and permission as aforesaid, owned by the Metropolitan Street Railway Company, as fixed and determined by said board, is unequal in that it has been made at a higher proportionate valuation than the assessment of other special franchises of the same character in the State of New York, to wit: at a higher proportionate valuation than the assessment of the franchise, rights and permissions to construct, maintain and operate railroads on the

surface of streets owned by other railroad corporations in the State of New York.

Sixth. That the said assessment and said valuation of the franchise, rights, and permissions owned by the Metropolitan Street Railway Company, as aforesaid, as fixed and determined by the State Board of Tax Commissioners, is unequal in that it is made at a higher proportionate valuation than the assessment of all other real estate in the city of New York.

Seventh. That said corporation has not been given such a hearing before the commissioners as it is entitled to under the laws and constitution of the State.

Eighth. That the right, privilege and franchise owned and possessed by the Metropolitan Street Railway Company was granted to and acquired by the said company or its grantors under and pursuant to contracts with the State and the city of New York and upon conditions and stipulations in reference thereto, which exempt the said franchise from taxation by the State Board of Tax Commissioners, and the said Metropolitan Street Railway Company claims that its rights, privileges and franchises are not taxable.

That the State Board of Tax Commissioners erred in fixing and determining the value of all the special franchises of the complainant at one aggregate sum and in treating all of said special franchises as one single franchise, instead of fixing and determining the value of each separate franchise separately, and that for this reason the said assessment is illegal.

413 That said corporation refers to and makes a part of this complaint all the reports, statements, affidavits and information of every kind furnished by it to the commissioners, and now on file with the said board.

Dated New York, April 9th, 1901.

METROPOLITAN STREET RAILWAY COMPANY,
By D. B. HASBROUCK, *Vice-President.*

STATE OF NEW YORK, *County of New York,* } ss:

D. B. Hasbrouck, being duly sworn, deposes and says: That he is the vice-president of the Metropolitan Street Railway Company; that the foregoing statement specifying the respects in which the assessment upon the said company is incorrect is true.

D. B. HASBROUCK.

Sworn to before me this 11 day of April, 1901.

F. J. MARIWELL,
Notary Public, New York County.

Defendant's counsel offered in evidence the petition of the Metropolitan Street Railway Company, verified July 13, 1900, for a writ of certiorari to review the assessment on the capital stock.

Objected to as incompetent, irrelevant and improper.

Objection overruled. Exception.

Marked "Defendant's Ex. No. 2, September 18, 1901—J. M. R." (See p. 466.)

Defendant's counsel offered in evidence Schedule A, page 11, annexed to the petition, verified April 18, 1900, by Charles E. Warren, secretary.

Same objection, ruling and exception.

Marked "Defendant's Ex. No. 3, September 18, 1901—J. M. R." (See p. 475.)

Defendant's counsel offered in evidence the return made
414 by Thomas L. Feitner and others to the petition.

Objected to as immaterial. Offer withdrawn.

Defendant's counsel offered in evidence Schedule A 1, page 36, verified by Charles E. Warren, March 23, 1899, being a statement delivered to the commissioners of taxes and assessments for the purpose of assessment.

Objected to as immaterial and irrelevant.

Objection overruled. Exception.

Marked "Defendant's Ex. No. 4, September 18, 1901—J. M. R."

Defendant's counsel offered in evidence the following extract from the testimony of Charles E. Warren, given May 17, 1898, before the commissioners of taxes and assessment of New York, in the matter of the application of the Metropolitan Street Railway system for revision of the assessment against its capital and surplus for the purpose of taxation for the year 1898. The record recites the fact that Charles E. Warren, being duly sworn, testified that he belonged at 621 Broadway and was secretary of the Metropolitan Street Railway Company and most of the subordinate companies. The evidence is contained in and made part of the return made by the tax commissioners of the city of New York on a petition for a reduction of the assessment on the capital stock for the year 1900:

"Q. You have included here in this statement $5,000,000 first mortgage bonded indebtedness of the Lexington Avenue and Pavonia Ferry Railroad Company?

A. Yes, sir.

Q. What were its franchises?

A. It is all stated in this book.

Q. Yes; this franchise runs only from 42d street and Lexington avenue to the Harlem river?

A. Yes, sir.

Q. And from 116th street and Lexington avenue to Morningside park?

A. Yes, sir.

415 Q. They were all the franchises that it had at that time?

A. It ran from East river to Morningside park.

Q. Were its tracks laid at that time over that whole road?

A. They were under way—yes.

Q. Yes?

A. Yes.

Q. Are they laid there now?
A. Yes, sir.
Q. Did they have any real estate in this——
A. Had its power house station.
Q. Where was that?
A. 125th street and Lexington avenue. They own some property at 99th and 100th street and Lexington avenue.
Q. Both of these pieces of real estate are now owned by the Metropolitan Street Railroad Company?
A. Yes, sir.
Q. These two pieces of real estate, with the tracks, equipment and cars, were the only tangible property the company possessed, with its franchise, at that time?
A. Yes; and a piece of property at 116th street and Lenox avenue.
Q. How large?
A. About 150 x 200.
Q. What was the total value of the real estate they did own on 126th street, this power house at Lexington avenue and 106th street and this piece of property on 116th street?
A. I don't know.
Q. As much as a million dollars?
A. With improvements—yes.
Q. So that this piece of property as to which you have just testified, the railroad, the tracks and equipment plus its franchises, were capitalized at $5,000,000 of bonds?
A. Yes, sir.
Q. And they were taken by the railroad company, the bonds for this sum?
A. Yes, sir.
Q. At that time the value of the property consisted, to a large extent, in the franchises that you received, did it not?
A. Yes, sir.
Q. What value would you place on these franchises at the time of the consolidation—as much as $5,000,000?
A. Yes, sir.
Q. Apart from the tangible property you acquired in the consolidation?
A. Yes, sir. $5,000,000. This road cost over $5,000,000 to build.
Q. The Lexington Avenue road?
A. That is the property—yes.
Q. The Columbus and Ninth Avenue Railroad Company
416 has also been consolidated in the Metropolitan Street Railway Company?
A. Yes, sir.
Q. That company has become liable for its indebtedness of $3,000,000 in the same way?
A. Yes.
Q. Its franchise extends only from 64th street to 110th street on Ninth avenue, does it not?
A. Yes, sir.

Q. And upon 106th street, between Columbus and Amsterdam avenues?

A. Yes, sir.

Q. Has it any real estate? Did it have any at that time?

A. No, sir.

Q. All the property it possessed at that time was tracks and equipment?

A. Yes, sir.

Q. What was the capital stock of that company?

A. $3,000,000.

Q. In addition to this $3,000,000 of bonded indebtedness?

A. Yes, sir.

Q. Then the only property which the railroad has taken over from that company in consideration for its assumption of the $3,000,000 together with the bonded indebtedness outside of the tracks and equipment of this road, are the franchises, is that right?

A. Yes, sir.

Q. You have included here consolidated mortgage bonds of the Broadway and Seventh Avenue railroad, $12,500,000?

A. Yes, sir.

Q. You have also claimed in your statement that you have put in on behalf of the Broadway and Seventh Avenue railroad that this indebtedness of the Broadway and Seventh Avenue Railroad Company is an offset for that railroad, have you not?

A. Yes, sir.

Q. In other words, you claim it as an offset against the Broadway and Seventh Avenue Railroad Company and also against the property of the Metropolitan street railway, is that right?

A. I am not able to determine."

Objected to as improper, irrelevant and immaterial. That it is a part of an examination taken for a year before the special franchise law took effect, in another proceeding, on an examination by the tax commissioners. On the further ground that in answer-
417 ing the question asked him he was not engaged in the performance of any duty as secretary of the company.

The REFEREE: I will sustain the objection on the ground any declaration as to the value of the property he made there, whether under oath or otherwise, did not bind the company.

Defendant excepts.

Adjourned to Friday, September 27, 1901, 11 a. m., at the capitol in the city of Albany, N. Y.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The Metropolitan Street Railway Company *vs.* THE STATE BOARD OF TAX COMMISSIONERS. (Continued.)

ALBANY, N. Y., FRIDAY, *September* 27, 1901.

Adjourned to Wednesday, October 2, 1901.

ALBANY, N. Y., WEDNESDAY, *October* 2, 1901.

CHARLES E. WARREN, recalled by the defendant.

Examined by Mr. FIERO:

Q. How long have you been connected with the Metropolitan Railway Company?

A. Since the organization of the company.

418 Q. Previous to that time with any of the roads?

A. Yes, sir; I was connected with the Houston and West Street, the predecessor of the Metropolitan Street Railway Company, since 1886.

Q. How long have you occupied the position of secretary?

A. Since the Metropolitan street railway was organized.

Q. Are you also treasurer of the road?

A. I am now; have been for the past year.

Q. Have you been secretary since 1893?

A. Yes, sir.

Q. Do you recollect in 1898, in the spring of that year, in May, of appearing before the commissioners of taxes and assessments of the city of New York in reference to the assessment which had been made upon the personal property, capital stock, &c., of the Metropolitan?

Objected to as immaterial and improper.

Objection overruled. Exception.

A. Yes, sir; I was before the commissioners.

Q. How came it about that you appeared before the commissioners; what was the occasion of your appearance there?

Same objection, ruling and exception.

A. I appeared for someone upon the reports we made to the commissioners.

Q. At whose request or suggestion?

A. Our counsel.

Q. Requested you to attend?

A. Yes, sir.

Q. Who was your counsel at that time?

A. Mr. Henry A. Robinson.
Q. Judge Brown was general counsel?
A. I think Judge Brown was at the time.
Q. Do you recollect which of them asked you to appear?
A. I do not.
Q. You did appear and were examined there?
A. Yes, sir.

Q. Do you know whether that appearance was in connec-
419 tion with a request or a requirement from the city board that some officer of the company should appear in connection with the matter?

A. I think we did receive official notice from the board to appear for examination.
Q. That some person appear?
A. Yes.
—. The notice not specifying who?
A. No; I was directed by counsel to appear.
Q. You were at that time familiar with the affairs of the company?
A. Yes, sir.
Q. Had you previous to that time made a statement to be filed with the commissioners of taxes and assessments such as I show you, Schedule A 2 on page 38?
A. Yes, sir.
Q. You know the Lexington and Pavonia Ferry Railroad Company?
A. Yes, sir.
Q. Where is that line located?
A. The Lexington and Pavonia Ferry Railroad Company runs from 42d street north to the Harlem river on Lexington avenue, and on 116th street from Lexington to Morningside park.
Q. When was that acquired or how was it acquired by the Metropolitan Company?
A. About May 18, 1894.
Q. By consolidation?
A. Yes, sir.
Q. So it became part of the Metropolitan Street — Company?
A. Yes, sir.
Q. Of what did that property consist at that time, the Lexington Avenue and Pavonia Railroad Company?
A. A railroad running as described, from 42d street to Harlem and on 116th street; of a couple of car houses and of car equipment.
Q. Any real estate?
A. Yes, sir; power stations, car houses.
Q. What was the consideration paid by the Metropolitan in that consolidation?

Objected to as not the best evidence on the ground it is a matter of record.

420 Q. What indebtedness was assumed; what arrangement was made?

Objected to as not the best evidence on the ground it is a matter of record.

Q. Is it a fact that in that consolidation the Metropolitan Company assumed an indebtedness of $5,000,000?

Objected to on the ground the statute provides the effect of the consolidation.

Q. You have stated in the schedule which you made on the 23d of March, 1899, for the department of taxes and assessments, there appears a statement of the real estate and of the personal property of the corporation, does there not, the Metropolitan?

A. Yes, sir.

Q. I call your attention to that; does there appear on page 37, "First mortgage bonds, Lexington and Pavonia Ferry Railway Co., $5,000,000?

A. That is correct.

Q. What does that mean as it appears there, that that is an indebtedness of the Metropolitan Street Railway Co.?

A. An indebtedness the Metropolitan street railway assumed under the consolidation.

Q. Was there any other indebtedness assumed at that time?

A. Not that I recollect; no, sir. There was no floating indebtedness.

Q. As to the property which was obtained, are you familiar with it and were you in 1898?

A. I was, yes.

Q. And are now?

A. I don't know that I can cite correctly the exact property; it is all sealed in the consolidation agreement.

A. As to the track which was laid down at that time on that road, what was its character?

A. It was an underground conduit system of electricity.

Q. I mean at the time of consolidation?

A. No; it was a cable system at that time.

421 Q. And continued so *for* how long?

A. Up to within a year ago.

Q. It was a cable system in 1898?

A. Yes, sir.

Q. Do you know what the value of the tangible property in the street was at the time that it was acquired?

Objected to as immaterial; second, the rule of assessment must be the cost of reproduction at the time of the assessment; third, all the commissioners have already testified that was the rule they adopted.

Objection overruled. Exception.

A. No, I do not know.

Q. Did you know in 1898?

Same objection, ruling and exception.

A. I knew from the expenditures made by the company how much value was put in the property.

Q. Was there any change in the cost of the property, 1898 up to January, 1900?

A. Yes, the company had under process the change from cable to underground conduit system of electricity.

Q. How far had that progressed?

A. I am not competent to say.

Q. When was it commenced?

A. I can't tell you that.

Q. Was it commenced as early as June previous?

A. Previous to what?

Q. Previous to January, 1900?

A. I am not prepared to give you dates on the subject; I am not the engineer of construction.

Q. So that you don't know when that work was actually commenced?

A. I do not recollect.

Q. You had the books and made the reports?

A. I suppose it is a matter of record in our books.

Q. At the time you made the report to the tax commissioners, did you know then?

A. My reports are all made up from our records, and any
422 information in the reports is obtained from our records, but I can't trust my memory to state now.

Q. You haven't any personal knowledge in regard to it, as to whether in the statement of expenditures by the Metropolitan road, as made up by you as of the date of June 30th, 1899, you included any expenditures made in the change of the power?

A. I can t recall; no, sir.

Q. Was there any change of that kind made previous to the first of January, 1899; do you know about the date?

A. No, sir, I do not; there are too many dates in conjunction with those reports for me to recall.

Q. Was it at about that time; have you any knowledge as to about when that change was made?

A. The change was commenced some time in 1899 or 1900.

Q. Immediately previous to the commencement of the change, what was the value of the track and tangible property in the streets of the Lexington Avenue and Pavonia Ferry Co.?

Objected to as immaterial and improper; the rule of valuation for the purpose of assessment is the cost of reproduction, and not the value of the property in the street; second, it appears by the testimony of the commissioners that no separate valuation was put upon the tangible property in making the assessment on the special franchise.

Objection overruled. Exception.

A. I can't answer the question.
Q. You don't know?
A. No, sir.
Q. Did you ever estimate the value of the franchise, of the property which was acquired by the consolidation; that is, the property of the Lexington and Pavonia Ferry Railroad Co.?

Objected to as immaterial and improper; and further, that
423 if Mr. Warren is to be used as an expert on valuation, he must be qualified as such.
The REFEREE: You may ask him whether he knows the value.

A. I don't know the value.
Q. Have you heretofore, under oath, as a witness, given an estimate of the value of the franchise of this company?

Objected to as improper and immaterial.
Objection sustained. Exception.

Q. What was the value of the franchise of the Lexington Avenue and Pavonia Ferry Railway Co. on the 17th day of May, 1898?

Objected to as immaterial and improper, and as involving the elements of value that are not present in this case.
Objected to on the further ground that the witness has not been shown to be an expert and qualified to give such testimony.
Objected to further unless it is confined to the special franchise and it calls for a valuation before this law was enacted.
Objection sustained. Exception.

Q. What was the value of all the franchises of the company on the 17th day of May, 1898?

Objected to as improper, irrelevant and immaterial.
Objection sustained. Exception.

Q. What, in your opinion, was the value of the franchise of the company to be a corporation on the 17th day of May, 1898?

Objected *as* as irrelevant, immaterial and improper.
Objection sustained. Exception.

Q. What, on the 17th day of May, 1898, was the value of the good-will of that corporation?

Same objection, and on the ground it is not a part of the
424 special franchise, and the testimony is it was not included by the commissioners in their assessment.
Objection sustained. Exception.

Q. Did you testify before the tax commissioners of the city of New York on the 17th of May, 1898, as follows:

Objected to as immaterial, irrelevant, improper, and has already been excluded.
Objection sustained. Exception.

Q. Did you testify before the tax commissioners of the city of New York, on the 17th of May, 1898, in substance, that the franchises of the Lexington Avenue and Pavonia Ferry Railway Company were worth about five million dollars?

Same objection, ruling and exception.

Q. Were the franchises of the Lexington Avenue and Pavonia Ferry Railway Company on the 17th of May, 1898, worth five millions of dollars, or about that sum?

Objected to as irrelevant, immaterial, improper and as leading. Objected to, further, the witness is his witness, and he has not been shown competent to give an expert opinion on the question of value, and further, that it is not confined to the special franchise.
Objection sustained. Exception.

Q. Was the special franchise of the Lexington Avenue and Pavonia Ferry Railway Company worth five millions of dollars, or thereabout, in June, 1899?

Objected to on the grounds stated in the last objection, and on the further ground that there was no such company as the Lexington Avenue and Pavonia Ferry Railway Company in 1899, but the special franchise had been merged with the other franchises of the Metropolitan Street Railway Company, and no separate valuation was put on the franchise originally owned by the Lexinton Avenue, but was assessed as a part of a whole single franchise owned by the Metropolitan corporation.

The REFEREE: I will receive this as an item of evidence bearing upon the general question of value, if he knows.
Defendant excepts.

A. I do not know.
Q. Were all the franchises of the company worth five millions of dollars, or thereabouts, on June 30th, 1899?

Objected to on the ground stated to the previous question.
Objection sustained. Exception.

Q. Was all the property derived in the consolidation of the Lexington Avenue and Pavonia Ferry Railway Company with the Metropolitan Street Railway Company, exclusive of tangible real property and personal property, worth five millions of dollars, or thereabouts, on the 30th of June, 1899?

Objected to as immaterial and irrelevant, and on the grounds heretofore stated.
Objection sustained. Exception.

Q. What was the value of the real and personal property, exclusive of franchises, on the 30th of June, 1899, which was derived by the Metropolitan Street Railway Company from the Lexington Avenue and Pavonia?

Objected to as immaterial and irrelevant; the witness has not been shown to have any knowledge of the value of real property in the city of New York.

Objection sustained. Exception.

By the REFEREE:

Q. Do you know the value of that real estate?

A. I do not. May I state my qualifications?

426 By Mr. FIERO:

Q. You may state your qualifications?

A. I can't recall from memory the cost of these different pieces of property that were acquired through consolidation of Lexington Avenue and Pavonia Ferry railway at this date; it is too much property and too much data to charge one's memory, whether they paid three hundred thousand or four hundred thousand for a piece of property, or how much they expended for buildings.

Q. You know what the property was on the 1st of January, 1900?

A. I do not; I know they bought certain blocks of property, what they paid for it now I can't recall.

Q. Could you recall it in May, 1898, better than now?

A. No, sir.

Q. Had you made any special examination with reference to it then for the purpose of testifying?

A. I presume I had.

Q. What you stated then would be correct?

A. I don't recall what I stated then.

Q. I ask you the general question whether the statement you made with regard to the matter at that time, whether you would be willing to say that was a correct statement?

A. I don't know at all what you have in evidence there on my statement.

Q. I didn't ask you in reference to that; I ask you whether if you made any statement in regard to the value of this property in 1898?

Mr. BROWN: What property are you referring to?

Mr. FIERO: To the Pavonia and Lexington Avenue property.

Objected to as immaterial, irrelevant, and improper.

Objection sustained. Exception.

Q. If you made any statement in regard to the value of
427 the real estate of the Lexington Avenue and Pavonia Ferry Railway property in 1898 at that time was that correct, as the result of your examination?

Objected to as irrelevant and immaterial.

Objection sustained. Exception.

Q. When did you go into the railroad business, and in what capacity?

A. In 1886, general clerk, purchasing agent, accountant.

Q. How long did you continue in that capacity?
A. Couple of years.
Q. What then?
A. Secretary of the company.
Q. What company?
A. The Houston, West Street, Chambers Street railroad, which was consolidated with the Metropolitan street railway.
Q. From there?
A. Secretary of the Metropolitan street railway.
Q. That was in 1893?
A. Yes.
Q. In connection with the Metropolitan Street Railway Company you had to do with books of account?
A. I had supervision of accounts and books.
Q. Do those books show valuations of property which came into the hands of the Metropolitan?

Objected to as immaterial, improper and irrelevant.
Objection overruled. Exception.

A. They show prices paid.
Q. Is there not also a statement of valuations carried upon the books of the company, appraised valuation?
A. Yes.
Q. Is that true of all the properties of the company, real estate acquired by it?
A. Yes, sir.
Q. Is it true of the property acquired from the Lexington Avenue and Pavonia by the consolidation?
A. No, sir.
Q. It is not true of that?
A. No, sir.
Q. The books don't show at all the value of the property?
428 A. The Metropolitan street railway got the property through consolidation; they didn't buy the property.
Q. So there is nothing upon the books of the company showing its valuation?
A. No, sir.
Q. Have you ever examined the property with the view to ascertaining its value?
—. No, sir.
Q. Did you about May, 1898, make any examination of the property with the view to testifying as to its value?
A. I don't recall doing so.
Q. Did you make any examination of the books for the purpose of testifying as to its value?

Objected to as immaterial.
Objection overruled. Exception.

A. I do not recall making any examination.
Q. Did you make any examination then of any books or papers

or of the property for the purpose of testifying as a witness before the tax commissioners at that time?

A. I made an examination of the books and records of the company when reports were made to the tax commissioners, and on those reports I stood.

Q. Did you at that time familiarize yourself with the facts in regard to the Lexington Avenue and Pavonia road?

A. I don't recall whether I did particularly in that instance.

Q. At the time that you went before that board for the purpose of testifying, did you know the facts with regard to this property?

A. In a general way; yes, sir.

Q. You knew them so far as you testified to them?

A. Yes, sir, I presume so.

Q. Was your testimony with regard to that property derived from the Lexington Avenue and Pavonia Company, as given at that time, a correct statement of the facts?

Objected to as irrelevant, immaterial and improper.
Objection sustained. Exception.

429 Q. Did you testify at that time with reference to the value of any of the real estate?

Objected to as irrelevant and immaterial.
Objection sustained. Exception.

Q. Did you testify that some of the property was of the value of one million dollars at that time?

Same objection, ruling and exception.

Q. Did you testify as to the value of the franchises of the property at that time?

Same objection, ruling and exception.

Q. Was it the fact that the franchises of the Lexington Avenue and Pavonia Ferry Railway Company were worth five million dollars May 17th, 1898?

Same objection, ruling and exception.

Q. Did you so testify before the commissioners of taxes May 17th, 1898?

Same objection, ruling and exception.

Q. If you so testified May 17th, 1898, is it a fact?

Same objection, ruling and exception.

Q. With regard to the Columbus and Ninth Avenue Railway Company, about what time was that consolidation?

(No answer.)

Q. Did the company assume three million of indebtedness at that time?

Objected to on the ground the agreement of consolidation shows and the statute declares its effect.

Objection sustained. Exception.

Q. What property did the Metropolitan Company obtain upon the consolidation of the Columbus and Ninth Avenue railroad?

Objected to as not the best evidence; the record shows it. Objection sustained. Exception.

430 Q. Have you the consolidation agreement between the two companies in your possession?

A. No, sir, not now.

Mr. FIERO: I would like to suspend the examination of this witness until such time as we can have that agreement, and give notice to the other side to produce.

Mr. BROWN: If the witness knows what property it got I have no objection to his stating.

The WITNESS: We got the railroad and got some car equipment; the railroad runs from 64th and Amsterdam avenue to 110th street; certain car equipment; I don't know how many cars. That is all I recall they got.

Q. You don't recall their getting any outside real estate?

A. No, sir.

Q. How was your road equipped at that time?

A. Cable road.

Q. Do you know the value of the real estate which was acquired at that time?

A. There was no real estate acquired with the road.

Q. Except the ties, rails, &c.?

A. That is all.

Q. Do you know the value of that tangible property upon the street?

A. I do not.

Q. Do you know the value of the car equipment?

A. I don't recall.

Q. Did you at any time know?

A. I presume I did at the time it was acquired.

Q. Did you know in 1898?

Objected to as immaterial. Objection overruled. Exception.

A. I don't know.

Q. Did you testify May 17th, 1898, in answer to this question, as follows: "Then the only property which the railroad (referring to the Metropolitan) has taken over from that company (referring to the Columbus and Ninth Avenue) in consideration for its assumption of the three million of dollars, together with the bonded
431 indebtedness outside of the tracks and equipment of this road are the franchises; is that right? A. Yes, sir."

Objected to as irrelevant and improper.

Objection sustained. Exception.

Q. Is that the fact, that the only property which the Metropolitan railroad took over from the Columbus and Ninth Avenue in consideration for its assumption of three millions of dollars together with the bonded indebtedness outside of the tracks and equipment of the road are the franchises?

Objected to on the ground that the statute declares the effect of the consolidation.

Re-direct examination by Mr. BROWN:

Q. You are familiar with the methods pursued by the tax commissioners of the city of New York in relation to the assessment of corporate property?

A. Yes, sir.

Q. Do you recall whether a notice was served on the Metropolitan Company, or yourself, by the tax commissioners in 1898 to appear before them?

A. A notice was served on the Metropolitan Street Railway Company; whether I received it personally or not, I don't recall.

Q. In pursuance of that notice you attended?

A. I appeared, yes.

Q. Do you recall you were examined by the corporation counsel?

A. Yes.

Q. Do you recall who it was?

The REFEREE: All that has been shut out.

Recess.

432 *Afternoon Session.*

HERBERT H. VREELAND, recalled by defendant.

Cross-examination continued by Mr. FIERO:

Q. When was the electrical system installed on Broadway, that is, when was it commenced?

A. It was commenced in 1894.

Q. I refer now not to the cable, but the underground system?

A. That is what I refer to; the central power station at 96th street and East river is part of the Broadway electric system; the expenditure for the Broadway electrical system commenced in 1894 with the commencement of that power station.

Q. Then the expenditure of six millions of dollars, of which you spoke in your direct evidence, commenced at that time?

A. Yes, sir.

Q. That is, in the change from cable to underground?

A. Yes.

Q. And continued up to what time?

A. It is still under way.

Q. That is, that expenditure is still going on, part of the six millions?

A. Not necessarily part of the six million dollars. I answer, the construction is still under way.

Q. My inquiry was in regard to the change which you say involved the loss of six millions in equipment; what I want to arrive at is, whether that had been lost, or what proportion of it, on the second Monday of January, 1900, if you can get at that fact?

A. It is absolutely impossible to testify to a condition that has pertained for seven years in various forms of progress of construction which has not culminated yet.

Q. As matter of fact, a portion, at least, of that loss had
433 been actually made or incurred at that time, had it not, on the second Monday of January, 1900?

A. No, sir.

Q. That loss of six millions?

A. No, sir. If I might be permitted to explain, the question asked me was in reference to expenditure, now it is turned into loss; I was testifying with reference to expenditure, not with reference to loss.

Q. The language was that "this was done at a cost of about six million dollars and a loss of six million of dollars in equipment;" it was that loss of six millions in equipment that I referred to in wiping out the cable. What I understand you, then, is you wouldn't regard that loss as having been made until the change was actually made and completed and the underground road was put in operation?

A. Yes.

Q. And the cable abandoned?

A. Yes.

Q. That would be the time that you would regard the loss as having been made; then it ought not to have, I take it in consideration in connection with this assessment made on the 2d of January, 1900—if we are agreed to that, I don't care to go into it further. I am willing to take his statement as to how, if in any way, that should affect the assessment made at that time.

Mr. FIERO: I move to strike out on page 296, line 14, the words, "this was done at a cost of about six millions of dollars and a loss of six millions of dollars in equipment," upon the ground that it now appears that the money had not been expended and that loss had not accrued at the time of this assessment.

Q. What was the date the first year of electrical operation of the Fourth and Madison Avenue line. You refer to it in your evidence, speaking of the first year, but you don't give the date?

A. I can't give the date from memory.

434 Q. Perhaps this will refresh your recollection, if I call your attention to what you testified to; you say, "As a special instance, the Fourth and Madison Avenue line, the first year that the Metropolitan Company operated after the lease, it was operated by horse-

power the same as prior to the lease, the gross earnings were $760,000 for the year, with operating expenses of about 70 per cent. The first year of electrical operation the gross earnings were $2,000,000, and the operating expenses, 35 per cent." I wanted to arrive, if I could, at the year to which you referred as the first year of electrical operation?

A. It is impossible for me to give the dates from memory.

Q. You say that the operating expenses during that year, whatever year it may have been, were 35 per cent. of the $2,000,000; that would be, I take it, $700,000; how was the balance of that $2,000,000 expended; what was done with it, where did it go?

A. That proportion of it that was chargeable to lease money, lease rental, taxation, city, State, county, borough; taxes on gross earnings, taxes on capital stock, went to the respective comptrollers and local boards; the balance of it was a profit to the lease.

Q. That is, after payment of $350,000 to the Harlem railroad as the fixed sum to be paid annually; that was first paid, and those items which you have enumerated?

A. Yes.

Q. Were there any other expenditures that occur to you in connection with that matter, except for taxes of the character that you have mentioned; that is, were there any other payments except the $350,000 paid on account of the lease and taxes and license fees of different kinds aside from the fund which then went to the Metropolitan as profit?

A. There was the interest on the cost of reconstruction of the property.

Q. What form was that put in; how was that money
435 raised?

A. It was under general mortgage that covered the reconstruction of the various leased lines of the system.

Q. It was under the general mortgage given by the Metropolitan?

A. Yes, sir.

Q. There being one mortgage of $12,500,000 and another upon which there was due something over $8,000,000, which one of those was put on about that time?

A. The twelve millions and a half.

Q. So that whatever was paid as interest on the cost of reconstruction went into that twelve millions and a half of mortgage, the interest paid on that twelve millions and a half, and would appear in the interest account of the Metropolitan as interest on its bonds?

A. Yes, sir.

Q. It wouldn't appear anywhere as a distinct and separate item?

A. I am not the auditor and comptroller of the company; I am not the custodian of its books; I am only testifying from my general knowledge of the profits of the company.

Q. It is because I assume you have general knowledge of these transactions that I am asking you in regard to them. I suppose there can be no reasonable question about that, that this went into

the general payment; that is to say, there was no specific sum raised by the company in the way of bonds set apart and carried along, the interest upon which was paid in in any other way than general payment of the interest on the $12,500,000?

A. That is correct.

Q. Could you approximate the amount that went to the Metropolitan by way of profit after the payment of this $350,000 and the payment of taxes?

A. No, sir.

Q. Is there any way in which we can arrive at that fact?

A. I do not think that it would be possible to get it, as the Metropolitan Street Railway Company's books are kept as the books
436 of the Metropolitan Street Railway system, which includes all of its leased lines and all of its operation.

Q. Wouldn't we be able to get the amount, in the first place, that was paid on the lease, $350,000; that is arrived at without any difficulty. In the second place, wouldn't we be able to get the amount of taxes, license fees, &c., that were paid on account of the Fourth Avenue separate and apart from any of the other roads?

A. I couldn't answer that.

Q. Will not the books of the Metropolitan Company show the amount which came into its hands by way of profit from the operation of that Fourth Avenue road; that is, showing how much of the two millions was actual profit?

A. I can't answer that.

Q. But there is no question but that the surplus, after paying the items that I have named—that is, the amount due on the lease, taxes, license fees, &c., which you have enumerated—was paid to the Metropolitan or went into its hands and was a profit upon the lease?

A. Without any reference to what those amounts may be, yes.

Q. What officer of the company would we apply to for those figures?

A. It wouldn't be possible for any officer of the company to give those figures; as I stated, the leased lines, when merged or turned over into the operating corporation or operating departments of the Metropolitan system, lose their identity so far as our accounts are concerned; there is simply one set of accounts, the Metropolitan Street Railway Company. Whatever profit there is from its operation at the end of the year is the Metropolitan Street Railway Company's.

Q. How are you able to say, then, that there was two millions of profit?

A. I made no such statement.

Q. I beg your pardon; I mean two millions of gross
437 earnings?

A. The earnings and direct profit of each division is kept by the division, by the operating division official for his operating information.

Q. So that it is possible to get at the gross earnings of each one of those lines?

A. Not of each one of the lines.

Q. Each one of the companies, leased companies?

A. The leased companies, yes.

Q. Is it possible to get such a statement with regard to the different lines which enter into the consolidation of the Metropolitan Street Railway Company?

A. It is not.

Q. Could not the amount which the Metropolitan realized as profit upon this two millions of dollars be reached by taking, first, the amount paid upon the lease, and, second, a statement paid by way of taxes upon or by property of the Fourth Avenue Company?

A. It would not be possible, for each line bears a relation to the whole general operation through transfer systems, through systems of operation, through use of other tracks, through general uses of power, that the direct operating statistics of any line refer only to such operating statistics as the operating official of that road has in his charge.

Q. Assuming that your statement of two million of gross earnings and 35 per cent. of operating expenses is correct, then we could arrive at the net earnings, couldn't we, which went into the hands of the Metropolitan?

A. I don't see how you could, from the fact the whole general expense of an organization, legal and executive, is not included in the division operating expenses.

Q. Is it included in the 35 per cent.?

A. It is not.

Q. But it is included in the statement of the operating expenses of the Metropolitan system, isn't it?

A. It is.

138 Q. So that you could then arrive at how much the Fourth Avenue contributed toward the Metropolitan system; it wouldn't quite all be net profit, because there must be operating expenses deducted; is that a correct statement; that is, operating expenses of the Metropolitan so far as they are chargeable to the Fourth Avenue?

A. That is right.

Q. With those limitations, then, we could arrive at that fact. Who is the officer who has charge of the payment of taxes of the Metropolitan system?

A. Mr. Warren, the treasurer.

Q. You speak, at page 308, of leasing the Ninth Avenue railroad, running horse-cars and carrying very few passengers, you said you leased that at an exorbitant rental simply to get those cars off the cable line from 53d to 65th street; what was the rental which was paid the Ninth Avenue?

A. It was eight per cent. for a certain number of years of the lease and thereafter nine per cent.

Q. Eight per cent. up to this time?

A. A year or two ago; it is all a matter of record in the lease; it is within some short time.

Q. Your report says it was eight per cent. at the time that was made; $64,000 was the annual rental. Now, I call your attention to the report of the Ninth Avenue, as to the value of the tangible property, at $1,184,600, included in the special franchise, and $15,000 of that not included in the special franchise and $39,250, which is given as the statement of the personal; that would make a total of $1,238,850 value in that road at the present time; I suppose I am correct if I state the figures as they are here?

A. I can't testify as to the figures; it wouldn't refresh my recollection, because I never have anything to do with those reports.

Q. On page 6 of Schedule D there appears a profit and loss
439 of that road of $425,000; the profit and loss appears under the head of assets; can you tell me what that means in connection with the value which has been given?

A. I know nothing about the report.

Q. Mr. Warren is the man who knows about that?

A. Yes.

Q. Do you know what the income from that road has been, what it was during that year ending on the 30th of June, 1899?

A. I do not.

Q. Do you know whether or not it was operated at a profit or loss during that year?

A. I can't answer that.

Q. Do you know of any year during the past five years which it has been operated at a loss, the Ninth Avenue road?

A. I do not.

Q. Upon what did you base your statement that you leased that road at an exorbitant rental; I understand you now to say that you don't know whether it was run at a profit or at a loss?

A. I based my statement on a general knowledge of the conditions that existed with the property when we leased it; what have been the operating details of that individual property I don't know since.

Q. That is to say, then, that at the time that you leased it it wasn't earning enough to pay the rental that you agreed to?

A. That is correct.

—. You didn't mean to say the rental was exorbitant in view of its development and management?

A. I mean to be understood as saying that, as the property to-day does not earn its rental.

Q. Is that your impression with reference to it?

A. Yes.

Q. That the Ninth Avenue does not earn its rental?

A. That is it.

Q. Is there any separate statement made or kept with reference to the gross earnings of the Ninth Avenue?

A. There is of gross earnings, yes, sir.

440 Q. What is the percentage of operating expenses of the Ninth Avenue to gross earnings?

A. At the present time—and I want to explain why I can testify to this is because every day I have a statement of the car earnings of miles, our car earnings of the lines—the Ninth Avenue road at the present time is earning 19½ cents a car mile, and it is costing 23 cents a car mile to run it.

Q. Was that the condition of affairs in January, 1900, or June 30, 1899?

A. I can't testify as to that.

Q. Could you give the per cent. of operating expenses to gross earnings on that road?

A. I have already given them with reference to what is in my mind coming from these daily reports at the present time, that the operating expenses are over a hundred per cent., and I want to say I am not testifying with reference to your report; I am testifying to what is within my knowledge of a few days.

Q. You are not testifying with reference to the date of the report of the time covered by the report but only to what you have learned recently; you haven't any fact upon which you can testify with regard to the dates about which I inquire?

A. None personally, no, sir.

Q. Does this report which comes to you and which you have mentioned in regard to the Ninth Avenue cover the operation of all of the lines which you leased from the Ninth Avenue?

A. It does.

Q. Does that cover the cars operating over that line, in any way, of other lines?

A. No.

Q. So that you may receive a very great benefit, that is, the Metropolitan system may receive a very great benefit from the use of that line by the cars of other lines which you can now run over it, which wouldn't in any way appear in the income which is credited to it?

A. That is the value of consolidation.

441 Q. That is the fact, isn't it?

A. On that particular road, yes.

Q. Wouldn't that be so in very many instances; don't you mean that is true of each particular road as well as of that particular road?

A. I do not.

Q. Is it not true of every road over which cars of other roads run to a greater or less extent?

A. No, for there are many cases where a line uses the line of another company under an agreement that has existed for 20 or 25 years by the payment of a track rental and a proportion of the maintenance of that line which would have no bearing on this question at all; the line had a right there; it was there; it was there before we had it, and still runs there, so that it didn't affect the earnings of the property by our acquisition of it.

Q. In cases where you had no right to run your cars over that line

and you acquired the right either by consolidation or purchase there it has been beneficial to you?

A. In a great number of instances; there are instances where the lines are used simply for a purpose of connection between lines which adds nothing to the value of the lines but simply a facility of operation.

Q. Will you go quite to the extent of saying it doesn't add to the value of the lines when you have connection between them so you can carry on other business?

A. I mean that locations of car houses have reference to the question I am talking about. A line may use another line for the purpose of getting its cars to a car house, and use it a good many thousand miles a day which has no revenue, so that there are lots of lines in our system which are used by other lines which have nothing to do with the revenue.

Q. Not directly, but as a matter of convenience in running your cars to and from those barns, it indirectly aids, doesn't it; it
442 helps operating expenses, decreases them; you don't have to run your cars so far as you otherwise would but for those connecting links?

A. That is right.

Q. It appears that the Metropolitan Company owns $14,160,572.35 market value shares of stock and bonds of other companies. Can you tell me what the income is from those stocks and bonds?

A. I cannot.

Q. Can you state what the Sixth Avenue has earned for the current year; that is, the year which was current May 26, 1900?

A. I cannot.

Q. I take this date, from the fact that I find in the Street Railway Journal a headed statement of Mr. Vreeland on Third Avenue lines—a statement, among other things, the Sixth Avenue will earn for the current year $1,600,000, as against $718,000, 1898, which it earned as a separate line prior to the lease. Won't you look at that and see if that is a correct statement or statement made by you?

A. I wouldn't testify as to those figures without verification, because that wasn't furnished to that paper by me.

Q. That appears to be a statement furnished by you?

A. I can't tell how much they blue-pencilled it, mutilated it.

Q. And aside from the statement, what is the fact in regard to it; did you make that statement?

A. I say I don't know whether I made the statement or not; I wouldn't swear to it without verification.

Q. What is the fact with regard to the earnings of the Sixth Avenue line for the current year; that is, for the year ending May 26, 1900?

A. Impossible for me to say from memory.

Q. Have you any data from which you can ascertain?

A. None with reference to the Sixth Avenue line; I can tell what the Sixth Avenue cars earned. We run from the South
443 ferry to the Harlem river over eight or ten different pieces of road.

Q. Did you make a statement like this or not; if you did is it correct?

A. I made a statement with reference to the properties at the time we assumed the Third Avenue railroad; whether that statement you have there after being handled by an editor and the average newspaper man is the statement I made I can't say.

Q. Have you a correct statement of what you said at that time anywhere?

A. I couldn't answer that without consulting Mr. Warren, because I never do any detail office work.

Q. What did you mean by "the current year"?

A. I would make the same answer with reference to the report—that I have a good many interests to look after and it is impossible for me to testify under oath with reference to something that happened in 1900.

Q. Do you recall giving an interview of this character to any person representing the *Street Railway Journal?*

A. I do not; there was a general statement of that character issued from our office that went to newspapers.

Q. Are you able, by looking at that part of the statement, to say whether or not that is a correct statement of what was sent out?

A. I couldn't say without comparison.

Q. Can you make that comparion so as to be able to say whether or not that was authentic at that time?

A. I could; if there is a copy of the statement in our office, that I don't know.

Q. I will refresh your recollection further in regard to it as to whether you recollect that you stated the Eighth Avenue will earn $1,600,000 as against $744,860?

A. I will make the same answer in reference to the article.

Q. Do you know what the fact is in regard to the earnings
444 during that year; have you examined and investigated it as to whether the statement $1,600,000 for the then current year, which, I take it, ended June 30th, against $744,860, is correct?

A. I can't answer from recollection.

Q. Was there a very marked increase in those earnings?

A. There was on the Sixth Avenue line.

Q. Did it double?

A. I couldn't say as to that.

Q. You say the Sixth Avenue line. What do you mean by the Sixth Avenue line? Do you mean the property acquired from the Sixth Avenue Company by lease?

A. I do not.

Q. What do you mean?

A. I mean a line of cars starting from South ferry operating over various railroads and franchises of the system.

(Mr. Brown:)

Q. State what roads and franchises it does operate over?

A. This Sixth Avenue line is sub-divided into various lines oper-

ating to various terminals; one line of cars leaves South ferry on the Belt tracks, operates from State street to Whitehall street to Bowling Green on the tracks of the South Ferry Railroad Company. On Battery place on the Belt railroad. On Church street on the tracks of the Broadway and Seventh Avenue railroad. On Fulton street on the Fulton street railroad. On Barclay street on the tracks of the Sixth Avenue railroad. On West Broadway on the tracks of the Metropolitan street railroad to Chambers street; from Chambers street to Canal street on the tracks of the Sixth and Eighth Avenue Railroad Companies. From Canal street via West Broadway to Third and Fourth streets on the tracks of the Metropolitan street railroad. On Third and Fourth streets on the tracks of the Broadway and Seventh Avenue Company. On Sixth avenue from Third to Fourth streets to 59th street over the tracks of the Sixth Avenue Railroad Company. On 59th street from Sixth avenue to
445 Ninth avenue on the tracks of the Central Park North and East River Railroad Company; from 59th street and Ninth avenue to Manhattan street and Amsterdam avenue on the tracks of the Ninth Avenue Railroad Company; from Manhattan street and Amsterdam avenue to Fort George on the tracks of the Third Avenue Railroad Company.

Q. Is that the Sixth Avenue line as to which gross earnings can be ascertained, the line you have now described?

A. Yes.

Q. Do you know whether the gross earnings of that line for the year preceding the current year at this date were $718,890?

A. It was not in operation at that time.

Q. Do you know whether at any time within three years that is the sum which it has earned as gross earnings, the line which you have described?

A. The line I have described wasn't in operation except within the last year and a half.

Q. As to a statement made May 26, 1900, in regard to the Sixth Avenue line, if you spoke of the Sixth Avenue line at that time, what would you include in it; what would you mean by the line? would you mean the line running from the neighborhood of the city hall to Central park or all these ramifications?

A. Cover all of the various lines on which these cars operated comprising that line.

Q. That is, all these ramifications?

A. Yes.

Q. If it hadn't been in operation previous to that time do you see quite how there could have been a statement it earned $718,890 as a separate line?

A. Yes, sir.

Q. What was the separate line prior to the lease; was that all of these lines that you have mentioned?

A. No, sir.

Q. What was included in the separate line prior to the lease when you speak of the Sixth Avenue line?

446 A. The Sixth Avenue Railroad Company prior to the lease had a railroad from Vesey street and Broadway to 59th street at Central park via West Broadway, Canal street and Sixth avenue.

Q. Wasn't that what you speak of as the Sixth Avenue line in connection with its earning capacity?

A. No, sir.

Q. When you say the Sixth Avenue would earn for the current year $1,600,000 as against $718,890, which it earned as a separate line prior to the lease, wouldn't that comparison be with the Sixth Avenue line as such running from the city hall to Central park?

A. It is very hard to testify on something that I already say I don't know anything about; I don't know as I am responsible for what you are reading from.

Q. Then you can't answer that question. Now, I want to refresh your recollection further by asking whether you recollect this and whether it is a correct statement of the fact, and I read from the same paper, at page 511, purporting to be what you had stated, "The Sixth Avenue line running from the neighborhood of the city hall to Central park and there abruptly terminated conducted separately from our system could never be of great value to its stockholders. It connected at 59th street with our Amsterdam Avenue cars and with our Lexington Avenue cars, so that the residents of the great and growing west side and of the thickly populated section east of Central park can swiftly and conveniently reach the Sixth Avenue shopping district. Its business enables us to pay an annual rental of $145,000 and all taxes and at the same time return to the stockholders of the Metropolitan $800,000 in annual profits." Do you recall that?

A. I can't say that I do.

Q. Is it a fact that for either the current year, May 26, 1900, or the year previous, the Metropolitan had been able to pay
447 $145,000 rental and all taxes and return to the Metropolitan $800,000 profits?

A. I don't know.

Q. Have you any means of ascertaining whether that is correct, or is there any means by which we can ascertain it?

A. I make the same answer as I did to the same question before that the Sixth Avenue Railroad Company has lost its identity so far as our operation is concerned; these earnings talked of were undoubtedly to cover the operation of the whole line of the system.

Q. Do you say that you didn't make any statement of the character and substance of the one which I have last read to you?

A. I do not; I say I made one of the character but I will not testify as to the substance.

Q. You do not know whether it is in substance correct or not?

A. I do not.

Q. You don't know how much within a hundred thousand dollars the Sixth Avenue turned into the Metropolitan during the year of which we are speaking?

A. It is absolutely impossible to testify to it, as there is no separation of accounts.

Q. Is there any separation of accounts whatever of the Sixth Avenue line and of the Metropolitan?

A. There is none.

Q. Can you arrive at gross earnings at all with reference to the Sixth Avenue line?

A. We cannot.

Q. Then it must be incorrect that you undertook to state the gross earnings at all, isn't it?

A. I made a statement of the gross earnings of the Sixth Avenue line; I did not of the Sixth Avenue railroad.

Q. Did you make a statement of the profits of the Sixth Avenue line running from the neighborhood of the city hall to Central park?

A. I did not.

Q. Made no statement whatever in regard to it; did you
448 say in connection with your statemant that the Sixth Avenue returned to the stockholders of the Metropolitan eight hundred thousand from annual profits; a somewhat larger sum is earned from the Fourth Avenue line under similar conditions of profit to its own stockholders and bondholders?

A. I can't say.

Q. Is it a fact that a larger sum than the one mentioned, that is, larger than $145,000 rental and $800,000 annual profits, was earned by the Fourth Avenue?

A. I can't say.

Q. Do you remember making any statement in regard to the Eighth Avenue?

A. I remember making a general statement.

Q. Do you remember whether you stated in this interview that it would earn $1,600,000 as against $744,860?

A. I made no such statement with reference to the Eighth Avenue railroad.

Q. What was it made with regard to?

A. The general statement was made with reference to the various lines that are operated in connection with the general property.

Q. Then whatever statement you made, if it included all the lines for one year it included that, didn't it?

A. Not necessarily; there are changes from month to month in our methods of operation.

Q. If you speak of the Eighth Avenue lines as compared, one year with another, wouldn't you speak of them as being substantially the same?

A. No, sir, the line that I described as the Sixth Avenue line was not in operation a year and a half ago.

Q. I am speaking now of the Eighth Avenue.

A. The Eighth Avenue road is operated now; the Eighth Avenue line is operating now differently from what it did six weeks ago.

Q. In minor matters?

A. No, in a very large matter.

449 Q. What difference was there between the Eighth Avenue line as it existed June 30, 1899, and June 30, 1900?

A. I couldn't be specific as to the changes at that time.

Q. Are you sure there were any?

A. I assume there were; no month goes along in our system without there are changes.

Q. Didn't you mean to be fair in your comparison between the two years to compare like with like?

A. I don't know as I made any such comparison.

Q. Will you say you didn't make that comparison?

A. I do not; I say I don't know; that comparison that you are reading from.

Q. You don't recollect it at all?

A. I recollect making a statement, which went out to the various newspapers; whether that statement is as that statement was made by me I don't know. I am not willing to testify to it.

Q. You have no recollection whatever upon that subject as to the details?

A. Not as to the details.

Q. Did any one prepare that statement for you?

A. I really couldn't answer as to that. There are lots of statements prepared for me.

Q. Was the statement prepared from the books of the company?

A. I think not.

Q. Do you know what data were used in preparing it?

A. Probably general information and knowledge of the operation of the property.

Q. Information in whose possession; who possessed that information?

A. I did at the time it was made.

Q. Have you forgotten it?

A. I have not particularly forgetten that I made such a statement; I have forgotten that I made anything that was edited by the Street Railway Journal.

450 Q. You say you had information at that time from which you made a statement; have you forgotten all that information?

A. Practically, yes.

Q. So that there is no record of it in your office?

A. There is a record of the statement.

Q. Is there a copy of the statement in your office?

A. I say I can't answer as to that without consulting Mr. Warren, as I do no detail office work.

Q. What do you mean by "record of the statement"?

A. I mean the statement would be on file there.

Q. In the office, in an orderly conduct of business, wouldn't a copy of such a statement as that be kept in the office, or the original of the statement?

A. Might be and might not.

Q. That is true as an abstract proposition, but I mean in the ordinary orderly conduct of business wouldn't a statement of that kind given out for publication, a copy of it, be kept in the office?

A. Would under ordinary conditions, if it was made in the office.

Q. This interview purports to give a statement of yours, the Fourth Avenue will earn $2,100,000 as against $845,919 made in the same connection; do you recollect that?

A. I recollect making a statement that had figures in it.

Q. But you don't recollect the figures?

A. I do not.

Q. Don't recollect within half a million dollars?

A. No, not within the whole amount of the figures.

Q. When you spoke of the Fourth Avenue there what did you mean by the Fourth Avenue?

A. When I spoke of the Fourth Avenue where?

Q. In this connection at this time?

A. I don't know anything about what you are reading from.

Q. I called your attention to this interview; you say you did give out an interview, but you aren't clear as to whether it is cor-
451 rectly reported; it mentions Fourth Avenue; did you, in that interview, mention Fourth Avenue?

A. I don't recall.

Q. Is there anything connected with what you call the Fourth Avenue line except what was acquired from the Harlem known as the city line?

A. The Fourth Avenue line is operated over a number of franchises of the Metropolitan and leased roads over which it wasn't operated as the Fourth Avenue railroad.

Q. In speaking of the Fourth Avenue, what did you mean; do you mean when you speak of the Fourth Avenue the tracks and property which was acquired from the Harlem, or do you mean the other tracks over which it is operated?

A. In speaking of any of the lines it is the earnings of the cars operating over the length of their routes, irrespective of whose road it goes on.

Q. That is true of the cars of other lines operated over the Fourth Avenue routes, too; that is over the regular Fourth Avenue line?

A. There are no cars of any other system operated over Fourth Avenue; the Second Avenue Railroad Company has a joint ownership of the tracks and has a franchise, and always did operate there; we aren't operating the Second Avenue cars any place where they did not operate under their original franchise.

Q. At the post office?

A. The Second Avenue, Third Avenue and Fourth Avenue have joint rights.

Q. They all run over tracks of the Fourth Avenue line?

A. Run over one track that belongs to Fourth Avenue; one belongs to Third Avenue and part of one belongs to Dry Dock. Some be-

longs to Second Avenue; some belongs to New York and Harlem Steam Railroad Co.

Q. Those are under contracts which were made before you took possession, before you obtained the lease?

452 A. I couldn't testify directly as to that; they are all a matter of record, what the track agreements were.

Q. Do you recollect speaking about the Second Avenue, that it will earn $1,450,000 as against $700,023?

A. I don't recall it.

Q. Recollect of speaking of the Second Avenue at all?

A. I have spoken of the Second Avenue within the last five minutes.

Q. I mean in this interview?

A. I don't agree to the authenticity of anything in that interview.

Q. I ask you if you now remember of having spoken of the Second Avenue in that interview?

A. I did not have that interview.

Q. You didn't have this interview?

A. No, sir.

Q. Manufactured out of whole cloth?

A. It wasn't an interview.

Q. I will accept your correction, in the statement; in the statement which you gave out for publication in May, 1900, did you mention the Second Avenue railway, saying it will earn $1,450,000 as against $700,023?

A. I have no recollection of what was in the statement.

Q. What does the Second Avenue mean, used in connection with railroads—does it mean anything more than the line of the Second Avenue which you leased on the part of the Metropolitan?

A. Yes, sir, it does.

Q. What else does it take in?

A. It takes in the operation of its cars over other lines of the system, other new connections, and also the facility of transfers at every connecting point on the system with the right angle lines.

Q. That is exactly what you mean and what you have said in regard to the other lines, isn't it; that is, it is the operation, for instance, of the Sixth Avenue cars over all of those different routes; what you mean is the Fourth Avenue cars run not only on the

453 Fourth Avenue line but over these other routes; that is all that you mean by that statement?

A. What statement?

Q. The statement that you have just made, that the Second Avenue or the Fourth Avenue, or the Sixth Avenue would include something more than the properties acquired from each one of these separate corporations?

A. My answer would refer only to the lines that I have mentioned.

Q. Which ones?

A. The Second Avenue, the Fourth Avenue and Sixth Avenue and Eighth Avenue.

Q. As to those all that you mean is that the cars of those lines run not only over the tracks acquired from the companies of that name, but over other tracks?

A. That is correct.

Q. That makes other connections?

A. That is correct.

Q. That is turned in and reported by way of gross earnings to you as earnings of the Second Avenue, and of the Fourth Avenue, and of the Sixth, &c.?

A. Lines.

Q. Cars run over each one of these other lines, and go over the Second and Fourth and Sixth, or some one of them, and make reports as to their respective companies, don't they, of their gross earnings?

A. It would be necessary for me in answering that question to make it more in the way of a statement; that a division superintendent or general operating official has a number of roads under his charge; he reports what is earned by the cars operated by him. For instance, there is one man has got charge of the Eighth Avenue road, the Ninth Avenue road, and the Belt line, and two of the crosstown roads; he simply makes a report to-morrow that the cars operated by him to-day their gross earnings were so much, and the number of miles he ran, and sends it to the office. It is the
454 only information the auditor has as to the operation of the 500 cars out of a car-house; it is not specialized as to car number one operated over such a line, and earned so much money, and car number two operated over another line, but he has operated 500 cars from his house, and they earned so much money.

Q. How many of those different divisions are there in your system?

A. There are six.

Q. State what they are?

A. They are merely numbered. Number one comprises the First, Second, Third and Fourth Avenue divisions. Those are under charge of a division superintendent. Broadway, Columbus, Lexington, Lenox, South Ferry lines, and 59th Street crosstown, is number two, under charge of another division superintendent. All of the southeast and southern lines are in charge of another general foreman. All of the middle western lines are in charge of a general foreman, comprising probably eight or ten different properties. In that way they are subdivided sections through the city. So that a car starting from the south end and operating through number one, number one will have the gross earnings of that section, but he goes up here to number two—I ask for the privilege of making the explanation, because I don't want you gentlemen to think I am not trying to give you what you want. For instance, a car may leave the 86th Street and Madison Avenue house at five o'clock this morning and may not appear again in that house this week. In the

meantime that car may have wound up its trips at 146th street and Lenox avenue, and may be sent out to-morrow morning on the West Side line; the next day on a crosstown line, and it is just where these runs end, so that no man living can tell anything about the question of individual operation of our system. It is the same with the payroll; there are men in our system that go to five
455 different headquarters—the same man—by reason of the way his work is cut up to facilitate this method of what might be classed scientific railroad operation.

Q. Take such a case as that where a car would not come back for a week, where would its gross earnings be reported?

A. Wherever different conductors might be relieved. A conductor might have done a day's work south of 86th street on Fourth avenue, and he would report where he was relieved. The next conductor might work to the north end, and he might report at 147th street, and to-morrow morning a man might take the car, and when his day's work was done he might be relieved at 50th street and Eighth avenue, and he would make his report there.

Q. You mean to be understood that what statement you made—is that the gist of it, not assuming now for the purpose of this question, they were correct statements in regard to earnings—were estimates from your knowledge of the situation?

A. They would have been based upon that, certainly; couldn't have been based upon books, because they would have to be estimates of what was going to occur next year.

Q. They would be estimates, based upon your intimate knowledge of the whole situation of the system, and its conditions?

A. Yes, sir.

Q. That is, whatever you did say was based upon your knowledge of what had taken place, and your judgment of what in view of that was likely to be the income for the next year?

A. Whatever I said in the statement issued by me I answer yes to your question.

Q. Do you know whether it is a fact that the Metropolitan is paying the stockholders of the 23d Street line eighteen per cent. on its capital stock?

A. I do.

456 Q. That is the fact, is it?

A. It is. I made the lease, and the lease is a matter of record.

Q. Have you been familiar with the market value of the stock of the Metropolitan road since 1893?

A. In a general way, yes.

Q. Have you known its actual value?

Objected to on the ground it is not cross-examination, and as immaterial and improper.

It is admitted for the purposes of this proceeding only, that the price of the stock as sold on the stock exchange, and reported in the

Financial Chronicle on the 7th of January, 1900, as $175 per share, was the actual value of the share stock on that day.

This admission is made subject to the objection that the evidence is immaterial and irrelevant.

Objection overruled. Exception.

Q. By the report of the company June 30, 1899, it appears the value of the tangible real property included in the special franchise on the basis of reproduction, was $5,500,000; have you any knowledge in reference to that as a fact, do you know anything in regard to the value of that property?

A. I do not.

Q. Do you know what the real estate other than that upon the street was worth?

A. I do not.

Q. Do you know what real estate in the street was worth?

A. No.

Q. Do you know the value of the tangible personal property?

A. I do not.

Q. Do you know what the assessment of the personal property was for that year?

A. I do not.

It is admitted that the assessment on the capital stock was $10,725,000 for the year 1899 and is now in litigation.

This admission is made subject to the objection that the evidence is immaterial and irrelevant.

Objection overruled. Exception.

457 Q. Was there any property owned by this company on the 30th June, 1899, other than its real estate in the streets and the right to use the streets? I include in that real estate outside the street, whether used in operation or otherwise; and its personal property, cars and whatever other personal property it had aside from the stocks and bonds which it held?

A. I don't know.

Q. What, in your opinion, was the actual value of all the property of the Metropolitan Street Railway Company on the 30th June, 1899?

A. I don't know.

Q. Was it worth, in your opinion, as much as $30,000,000?

A. I don't know.

Q. Was it worth less than that in your judgment, or more?

A. I don't know.

Q. Have you no judgment or opinion as to the value of the property?

A. I have not.

Q. Do you know at what figure it is carried upon the books of the company?

A. I do not.

Q. Do you know whether there is any statement upon the books of the company of the appraised value of its property?

A. I do not.

Q. Who would have charge of the books of that character, if there are any?

A. Mr. Warren.

Q. Is there a statement of the cost of the property of the company?

A. I do not know.

Q. Do you know from what data the cost of the real estate and improvements was fixed in the report at something over $35,000,000?

A. I do not.

Q. Do you know whether or not that is in excess of its cost or whether it is approximately correct?

A. I do not.

(The REFEREE:)

Q. Do you know anything about those details?

A. I am paid a salary of $50,000 for my general knowledge of railroad operation, and I never do and never allow a head of a department to do detail work that a forty or fifty or sixty
458 dollar a month clerk can do. I hire a clerk to do it instead of a head of a department. My business consists in a general sitting up on top of the building and looking over this property. What the comptroller is doing, what the auditor is doing, or what the treasurer is doing, I don't know anything about.

Q. Do you know what consideration Mr. Lamont paid for the franchise of the Broadway surface railroad?

A. I only became connected with the property in 1893.

Q. I suppose the books show that?

A. I really can't answer what the books show.

Q. What consideration was paid Mr. Lamont by the Metropolitan Company?

A. Mr. Lamont severed his connection with the railroad company some two years before I entered the employ.

Q. I find in Schedule D of the report a statement of assets, additions, betterments, $3,276,064.82; I suppose you don't know what that refers to at all?

A. No, sir.

Q. I find new construction on lines owned and leased to be distributed, $14,297,105.09; do you know what that relates to, that item of nearly fifteen millions of new construction?

A. I do not.

Q. In relation to the 42d and Grand Street Ferry, are you familiar with the amount of rental paid by the Metropolitan to the 42d and Grand Street?

A. 18 per cent. on the capital stock.

Q. Does that company receive rentals from any other company?

A. Only under track agreements.

Q. That is, it receives payment from other companies for the right to run over its tracks?

A. Yes, sir.

Q. Is the 34th Street one of those companies?

A. The 34th Street uses its tracks.

Q. Do you know whether or not that is one of the com-
459 panies paying trackage?

A. I really can't say.

Q. I ask that question for the reason we find in the reports there are rentals received by the 42d Street and Grand Street Company, amounting to about $92,000, and it does not appear where they come from?

A. There is an agreement made between the 42d Street and Grand Street Ferry and the 34th Street Railroad Company which gives the 34th Street Crosstown Railroad Company the right to use its track from Broadway and 34th street way over to the 42d Street ferry. I can't say what the amount is, but there is a fixed amount. There are lines in the lower east side which use the tracks of this company; which, under the agreement, have to pay it regular rentals, but as to amount I can't testify.

Q. That is a matter the books would show?

A. Yes, sir.

Q. Do you recall the length of the 34th Street road?

A. In a general way the length of line over which it operates is about four miles, what proportion of that is 34th street I can't testify.

Q. Isn't the property of the 34th Street Company about a mile?

A. There is a mile of constructed franchise; there are a number of miles of unconstructed franchises.

Q. In the statement of its gross earnings as they appear in the report at $336,037.90 while its total property seems to be $66,550, and it has a capital stock of a million and its bonds are a million, can you state whether those gross earnings are from that company having simply those assets, or do they include something more, and if so, what?

A. No, this company only has charged against it the actual constructed road and equipment; the car houses it uses, the track terminals at both ferries and the greater part of the trackage it runs
over is leased from other companies. The Fourth Avenue
460 Railroad Company away back before we leased the property made a track agreement with this 34th Street Company for the use of their tracks from Lexington avenue to the 34th Street ferry and all west of Broadway they run on the tracks of other companies. But they are charged with the actual equipment and amount of track construction of that company, as far as I know.

Q. The income is really that which the company, as a company receive?

A. Yes, sir.

Q. Your statement indicates that it has other property leased by way of equipment, power-houses and things of that sort other than what I have stated?

A. Yes, sir.

Q. In the Fulton Street railroad, $7,922 received from sources other than actual operation; can you state what those sources are?

A. No, sir, I cannot; in a general way I should say they were from use of tracks and advertising privileges and things of that kind.

Q. Would it be the use of tracks by other companies by the way of rental?

A. Yes, sir.

Q. Is that one of the companies which you spoke of as being unprofitable?

A. Yes, sir.

Q. That has a bonded debt of $500,000?

A. It has a bonded debt; I couldn't answer as to the amount.

Q. I notice by the report that the actual tangible property is given at $35,000, and it appears that the interest on $500,000 is paid; what do you mean by this being unprofitable, that it doesn't pay anything beyond the interest on that bonded debt?

A. Yes, sir.

Q. You didn't mean it hasn't a pretty large earning capacity when it earns $20,000 with $34,461 of assets and earns $20,000 over and above operating expenses?

A. That property is like all the rest of those smaller prop-
461 erties; it is dependent upon the large system for its car barns and its facilities of operation; it has no car houses or anything of that character. If that company to-day had to maintain an operating organization and a car barn and its own equipment it couldn't operate for what its receipts are.

Q. Isn't the real difficulty with it now, the fact that it has a bonded debt of half a million dollars and only $35,000 worth of property to represent it?

A. The railroad company must have more property than that that runs from the East river to the North river.

Q. That is what I find from the report; if there is anything erroneous about it I would like to have it corrected. I call attention to this as it is one of the roads you spoke of as not being profitable, and I want to know if you meant by not being profitable, it didn't bring anything to the Metropolitan; it does appear to be profitable to the extent of earning $20,000, which goes to pay interest on bonds that it hasn't any property to represent. There is only $35,000 of actual tangible property; there is a bonded debt of $500,000, on which it pays interest, and I want to ask you whether you regarded the road as unprofitable in view of the very heavy bonded debt upon it, that is the necessity for paying out money on bonds?

A. The road had a bonded debt when we bought it and we paid money for the road. We get no return for the money we have invested in it.

Q. How much did you pay for the road over and above the bonded debt?

A. I don't know.

Q. The road seems to be carried as cost of real estate and improvements at about a million dollars; I want to ask you whether you spoke of its being unprofitable in view of the original investment and cost, or simply as a matter of actual operation?

462 A. I have been answering your questions; I think you will find I was referring to the Bleecker Street and Fulton Ferry Railroad Company, I said nothing about the Fulton Street railroad. I referred to the Bleecker and Fulton Ferry and to the 42d Street and Grand Street Ferry in my original testimony.

Q. You spoke of the probability of abandoning some of these roads as the result of this litigation; what roads had you in mind as likely to be or possible to be abandoned if the result of this litigation was adverse?

Objected to as immaterial, incompetent and irrelevant and as a matter brought out on the cross-examination.

Objection sustained. Exception.

(Mr. Brown:)

Q. Some of the leases are in perpetuity for the lifetime of the charter?

A. Yes, sir.

Q. I want to call your attention; you have spoken of the Fulton Street railroad as not paying operating expenses, "I didn't speak of it, but it don't. The Bleecker Street and Fulton Ferry. The Fulton Street railway was spoken of." What you meant by its not paying operating expenses was it didn't pay operating expenses over and above $20,000 of interest, I take it. It seems there was over and above operating expenses enough to pay interest on bonds?

A. So far as the Metropolitan street railroad was concerned it didn't pay anything to the Metropolitan Street Railway Company, which had an investment in the property.

Q. But it did pay operating expenses?

A. It didn't pay operating expenses of the Metropolitan Street Railway Company or any proportion of it.

Q. Didn't it pay its own operating expenses, in the first instance?

A. Paid its operating expenses so far as that individual property was concerned, yes.

463 Q. What did you mean when you said it didn't pay operating expenses?

A. I meant it didn't pay anything to the Metropolitan Street Railroad Company for its investment in it; it is operated by an organization of the Metropolitan Street Railroad Company which the Metropolitan Street Railroad Company pays as part of its operating expenses.

Q. It pays its own operating expenses?

A. As far as applying to the operation of the cars, yes.

Q. What would be a fair charge against that road for operating expenses on the part of the Metropolitan Company aside from what expenses it pays itself and what for?

A. The salaries of the various officers of the organization which that road would have to maintain on a full organization.

Q. What ought it to maintain now; what would be its proportion?

A. Would be a fair proportion of whatever the working force and working time it took of the Metropolitan system.

Q. It would have a fair proportion of what its own expenses are in proportion to the expenses of the entire system?

Objected to as too remote.

Q. Do you know whether or not it paid its operating expenses and interest on bonds before you took it?

A. It did not.

Q. How much did it fall short of it?

A. I can't say now; I don't know.

Q. Did it default in its interest?

A. So far as my recollection serves me; it is a transaction of some time ago; we took the road to keep it out of the hands of a receiver.

Q. It didn't go in the hands of a receiver and had paid up to that time?

A. It had not.

Q. How much was it in default?

A. I don't recall the amount.

464 Q. Before the consolidation, I suppose, it earned enough to pay its operating expenses?

A. It was in arrears to the city of New York for its license charges and its percentages; it had not paid its bondholders, and that supplied the money by which these various things were paid in addition to the money that was paid for its acquisition.

Q. Why did you buy a bankrupt concern of that character which was saddled with half a million of bonds and wasn't paying expenses, and pay something in addition to it?

A. For the same reason we leased other properties. That road had running rights; it had control of terminals that were valuable to us, to have their cars out of the way and control them.

Q. What terminals did it have?

A. It had a terminal at Fulton Street ferry, where it run in on the Bleecker Street and Fulton Ferry and Second Avenue track, and had one on the west side.

Q. The use of the tracks on the west side?

A. Yes.

Q. In the street?

A. Yes.

Q. What you bought practically was the use of the street?

A. No; they were our tracks. At the time we bought them it was simply buying a nuisance to get it out of the way of this character of operation on lines controlled by us.

Q. You owned the tracks at that time?

A. Yes; that I speak of.

Q. Did you own all of the Bleecker Street and Pavonia Ferry track?

A. Yes.

Q. What did you buy then; what did you get for this?

A. All that section of the road where its line was built.

Q. I understood you to say you owned the track?

A. You were speaking about terminals.

Q. What I want to know is what you got for the money you invested and the assumption of half a million dollars bonds?

465 A. Got a lot of old horses and cars, and some ramshackle track and a lot of debts.

Q. The horses and cars and things of that sort were substantially valueless, weren't they?

A. They had a good enough value to earn the money they were earning.

Q. As compared with this half million of dollars?

A. They had some value, not much.

Q. How much were they worth?

A. I don't know.

Q. You have spoken of buying this bankrupt road. How much were those cars and that personal property worth?

A. I don't know.

Q. Were they worth fifty thousand dollars?

A. I don't know.

Q. Were they worth a hundred thousand?

A. I don't know.

Q. Two hundred thousand?

A. I don't know.

Q. Three hundred thousand?

A. I don't know.

Q. Five hundred thousand?

A. I don't know.

Q. Nine hundred thousand?

A. I don't know.

Q. You don't know whether the personal property that you bought—cars and other stuff there—was worth nine hundred thousand?

A. I do not.

Q. Or whether it was worth a million?

A. I do not; I didn't buy the road.

Re-direct examination by Mr. PAGE:

Q. Were you president of this company, or were you connected with the system which bought the Fulton Street line at the time it was acquired by your system, or the company to which it is a successor?

A. I was not.

The following are copies of Defendants' Exhibits Nos. 2, 3 and 4, offered in evidence at the hearing of September 18th (see p. 413):

466 DEFENDANTS' EXHIBIT No. 2.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The Metropolitan Street Railway Company

against

THOMAS L. FEITNER, EDWARD C SHEEHY, Arthur C. Salmon, Thomas J. Patterson, and Ferdinand Levy, Composing the Board of Taxes and Assessments of the City of New York.

Taxes of 1900.

To the supreme court of the State of New York:

The petition of the Metropolitan Street Railway Company, upon information and belief, respectfully shows:

That on the second Monday of January, 1900, the said petitioner was, and still is, a railway corporation having a capital of $45,000,000, of which $44,928,900 is paid up, duly created and existing under and by virtue of the laws of the State of New York, and a resident of the borough of Manhattan in the city of New York, and that the principal office of said corporation then was, and still is, located in the fifteenth ward of the said borough of Manhattan in said city.

That the said corporation has been assessed for taxation for the year 1900 on valuations of its real estate and personal property (the latter being assessed under the designation of capital stock and surplus profits), and its name and valuations of its said real estate and personal property for the said year 1900 have been entered in the books kept by and in the office of the department of taxes and assessment of the city of New York, required by law to be kept,
467 and called "The Annual Record of the Assessed Valuation of Real and Personal Estate of Corporations," in which books are also entered the valuations of other real and personal estate of corporations assessed in said city.

That upon the second Monday of January, 1900, the valuations and assessments of the real estate of your petitioner, made by the board of taxes and assessments of said city, and appearing in said books, amounted to an aggregate sum of $4,022,800, and upon said day the valuation and assessment of the personal property (or capital stock and surplus profits) of your petitioner made by said commissioners and appearing in said books was the sum of $45,000,000.

That said board, between the second Monday of January, 1900, and the first day of May, 1900, advertised in the "City Record" and in one or more papers published in the city of New York, notice that said books were open for inspection and corrections of valuations of said real and personal property (or capital stock and surplus profits) by persons and corporations considering themselves aggrieved.

That subsequently to said second Monday of January, 1900, and prior to said first day of May, 1900, your petitioner, considering itself aggrieved by the said assessed valuation of its personal estate (or capital stock and surplus profits), made application to said board, pursuant to law, to have the same corrected, and the secretary of your petitioner was duly examined under oath by said commissioners. That your petitioner, prior to the 30th day of April, 1900, delivered to said board, pursuant to law, upon a printed form or blank, provided by said board, a statement, duly verified, of the condition of your petitioner for the purpose of assessment upon its personal property (or capital stock and surplus profits), on the second Monday of January, 1900, a copy whereof is hereto annexed, marked "Schedule A." And your petitioner during such period,
468 duly objected to the assessment of its personal estate (or capital stock and surplus profits), made and appearing as above described, and your petitioner protested, claimed and insisted to and with said board that on said second Monday of January, 1900, your petitioner had and owned no personal property (or capital stock and surplus profits) subject to taxation, and that it should not be assessed upon its personal property (or capital stock and surplus profits).

That the said statement delivered by your petitioner above mentioned was duly received, accepted and retained by the said commissioners.

And your petitioner duly protested, claimed and insisted that said commissioners should omit from the said "The Annual Record of the Assessed Valuation of Real and Personal Estate of Corporations" the amount inserted therein as the valuation and assessment of the personal property (or capital stock and surplus profits) of your petitioner for the year 1900, and also, that the said commissioners should make no assessment or valuation of the personal property (or capital stock and surplus profits) of your petitioner for any purpose. And your petitioner produced to and filed with said commissioners written statements, showing that your petitioner on said second Monday of January, 1900, owned shares of stock in other corporations which were taxable upon their capital stock under the laws of this State, amounting to and of the value of upwards of $14,542,172.35.

That the application of your petitioner to have said assessment corrected, and its protest, claim and insistment above mentioned, were made for the reasons and upon the grounds that said assessment so objected to was erroneous and illegal, and the particulars wherein it was erroneous and illegal then assigned were substantially the same as are hereinafter specified as the particulars
469 wherein the assessment finaly made by the commissioners is erroneous and illegal, to which specification reference is hereby made; and said grounds and particulars were specified by your petitioner to said commissioners.

That the statements delivered by your petitioner as above mentioned were duly received by said commissioners, and thereafter

they caused Charles E. Warren, the secretary of your petitioner, to be personally examined before them under oath touching the condition of your petitioner on the second Monday of January, 1900, for the purposes of taxation.

That your petitioner duly rendered to said commissioners a full and true statement of the actual value on said second Monday of January, 1900, of all the real and personal property (or capital stock and surplus profits) of your petitioner, except the actual value of its franchises. That the said commissioners thereupon reduced the said amount of the personal property (or capital stock) of your petitioner to the sum of $10,621,789.

That by the provisions of "the Greater New York charter" the said commissioners of taxes and assessments were required, after the thirtieth day of April, 1900, to prepare assessment rolls for the several boroughs of said city, containing valuations of real and personal property, and to certify and deliver such assessment rolls to the municipal assembly of said city on the first Monday of July in said year.

That the said commissioners of taxes and assessments, since the 30th day of April last, and since the valuation of the real estate and personal property (or capital stock and surplus profits) of said petitioner, and its name was entered in said "The Annual Record of Assessed Valuation of Real and Personal Estate of Corporations," prepared the assessment rolls of said real and personal estate of the several boroughs of said city, containing among others, the name of this petitioner, and valuations of its real estate and of its per-
470 sonal property (or capital stock and surplus profits), which said last-mentioned assessment roll of real and personal estate the said commissioners of taxes and assessments have completed and have delivered to the municipal assembly of said city of New York as required by law.

That on the first Monday of July, 1900, and not before, the officers who completed the said assessment rolls, and who verified the same, finally completed the same and delivered said rolls to the municipal assembly of said city, as required by law.

That in and by the said assessment rolls, as so finally completed and verified, the names and valuations of the real estate and of the the personal property (or capital stock and surplus profits) of this petitioner are entered, and the said commissioners of taxes and assessments have herein assessed the real estate of this petitioner at an aggregate valuation of $4,017,800; and said commissioners have therein assessed, or pretended to assess, this petitioner upon its personal property under the designation of its capital stock at a valuation of $10,621,789.

And your petitioner shows that the said assessment upon this petitioner upon the said valuation of personal property (or capital stock and surplus profits) for the purpose of taxation, and said valuation is illegal and void, and is erroneous; and your petitioner claims to be aggrieved and will be injured by said illegal and

erroneous valuation and assessment, and your petitioner specifies the following grounds of illegality and error, among others:

That on the said second Monday of January, 1900, your petitioner had no surplus profits or reserve fund, and possessed no property of any kind or nature, except such as is set forth in Schedule A, hereto annexed. That of such property the real estate owned by your petitioner was assessed at the valuation hereinbefore stated, to wit:

$4,022,800; and the personal property owned and possessed
471 by your petitioner consisted in part of stocks of other corporations of this State, which corporations are taxable under the laws of this State upon their capital stock, and such stocks were of the actual value of $14,542,172.35. That your petitioner had no other property of any kind than that specified in Schedule A, except the franchises it owned and possessed to operate railroads upon certain streets within the city of New York.

That your petitioner is unable to state the value of said franchises, and it alleges that the said commissioners of taxes and assessments have placed no separate value thereon, but have included them in the general valuation of your petitioner's capital stock for the purpose of taxation and assessment.

That on the said second Monday of January, 1900, the indebtedness of your petitioner amounted to the sum of $38,983,233.73-100.

That all the foregoing facts fully appear in the statement and other evidence rendered and submitted by your petitioners pursuant to law, as herein set forth; and the value of all the assets of your petitioner on the second Monday of January, 1900, was stated with precision and accuracy to the said commissioners, except the value of its franchises, which do not form a subject for assessment by said commissioners. That the said assessment and said affidavit, and the testimony of Charles E. Warren, submitted by your petitioner to the said commissioners, and all the information furnished to them by your petitioner, as above stated, was true. That said commissioners proceeded, nevertheless, to assess for the purpose of taxation for the year 1900 the personal property or capital stock of your petitioner; and the valuation of assessments, or pretended assessments, as made by them, was, as above set forth, the sum of $10,621,789.

That your petitioner alleges that said assessment is illegal and erroneous, by reason of over-valuation, and states the follow-
472 ing grounds of such illegality and for such assessment being erroneous by reason of their valuation:

(1.) That said commissioners did not deduct from the sum arrived at by them as the value of the assets of your petitioner, on the second Monday of January, 1900, the shares of stock of other corporations actually owned by your petitioner which were taxable upon their capital stock under the laws of this State.

(2.) That said commissioners did not deduct from the sum arrived at by them as the value of the assets of your petitioner, on the second Monday of January, 1900, the whole amount of the indebtedness of your petitioner outstanding on that day, and that said com-

missioners disregarded a large part of said indebtedness in arriving at their pretended assessment of your petitioner.

(3.) That said commissioners, by their pretended assessment, have attempted to assess as taxable assets the franchises of your petitioner; but no deduction has been made by them from the total value of the assets of your petitioner, and said commissioners have assumed that the taxable assets of your petitioner are equal to a sum which is composed of the taxable and non-taxable assets of your petitioner.

(4.) That said commissioners, in their pretended assessment, have disregarded the uncontradicted and unimpeached evidence of your petitioner, and have attempted to assess your petitioner for its personal property (or capital stock and surplus profits) without evidence, and in disregard of the facts.

That Thomas L. Feitner is president of the board of taxes and assessments of the city of New York, and that he and Edward C. Sheehy, Arthur C. Salmon, Thomas J. Patterson and Ferdinand Levy compose the board of taxes and assessments for said city.

Wherefore, your petitioner prays that a writ of certiorari may be issued and allowed by this honorable court, directed to said
473 board of taxes and assessments of the city and county of New York, commanding them to certify and return to this court:

(1.) All and singular the above proceedings above referred to, had by the commissioners of taxes and assessments of the city of New York, relating to such valuation and assessment, with the dates thereof, respectively, together with that part of the record relating to the same.

(2.) All and singular the papers submitted by your petitioner and filed with the said commissioners, and any examination under oath, or otherwise, of said petitioner or of any officer thereof.

(3.) Any other evidence or information, if any, before said commissioners, or considered by them in arriving at their decision, and if there were no such evidence or information, a statement of that fact.

(4.) A statement of the reasons for arriving at such decision and of the methods adopted by said commissioners in arriving at the same, and a statement showing under what law or by virtue of what power or authority or claim to authority, upon what evidence, and by what method, basis or theory, such valuation and assessment was made.

(5.) Any and all documents, records and papers, if any such there be, not embraced in the above specifications relating to and concerning the valuation for assessment and taxation of the personal property and capital stock of your said petitioner, and a statement of any other matters material to the determination of the application of said petitioner.

And also if any of the allegations of fact contained in this petition be not admitted, that evidence be taken with respect thereto, and also with respect to the true valuation of said personal property (or capital stock and surplus profits), and that your petitioner be per-

mitted to give in evidence on the hearing the matters shown
474 to said commissioners, and that the decisions and actions of the said commissioners be reviewed and corrected on the merits by this honorable court, and that the aforesaid errors of said commissioners may be corrected according to law, and that the said assessment upon this petitioner in respect to said personal property or capital stock and surplus profits may be set aside and vacated, and that your petitioner may have such other and further relief in the premises that may be just.

That no previous application has been made for this or any similar order or relief to any other court or judge.

Dated New York, July 13th, 1900.

METROPOLITAN STREET RAILWAY COMPANY,
By D. B. HASBROUCK, *Vice-President.*

CITY AND COUNTY OF NEW YORK, *ss.:*

Daniel B. Hasbrouck, being duly sworn, says that he is the vice-president of The Metropolitan Street Railway Company, the petitioner above named, that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why such petition is not verified by the petitioner is that the petitioner is a corporation; that deponent has derived his knowledge of the facts above set forth from employees, agents and officers of said petitioner, and from information acquired by him in the performance of his duties.

DANIEL B. HASBROUCK.

Sworn to before me this 13th day of July, 1900.

DAN'L W. PATTERSON,
Notary Public, N. Y. Co.

475 DEFENDANT'S EXHIBIT No. 3.

SCHEDULE A.

City of New York.

Department of taxes and assessments.

Commissioners' office.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Metropolitan Street Railway Company, showing its condition for the purpose of assessment, on the second Monday of January, 1900. The Metropolitan Street Railway Company was created by the consolidation of the Houston, West Street and Pavonia Ferry Railroad Company, the South Ferry Railroad Company, the Broadway Railroad Company, the Metropolitan Crosstown Railway Company, the Lexington Avenue & Pavonia Ferry Railroad Company, and the Columbus & Ninth Avenue Railroad Company. Upon such consolidation the stock of the consolidating companies was surrendered by the stockholders, and new stock of the Metropolitan Street Railway Company was issued to the stockholders of said consolidating companies, share for share.

Total gross assets including real estate			$23,007,416.31
Of above—real estate	$4,022,800.00		
personal property	4,442,443.96		
1,272 cars, valued at	$2,360,000.00		
Harness " "	3,000.00		
826 horses " "	41,300.00		
Plows, sweepers, wagons	15,000.00		
Cash in bank	1,845,793.12		
Supplies on hand	177,350.84		
Shares in other corporations, taxable on their capital stock	14,542,172.35		
Capital stock actually paid in or secured to be paid in		44,928,900.00	
Amount of surplus earnings		2,970,117.50	
Rate of dividend for last year, or last annual dividend			
Amount actually paid for real estate, purchased by the Metropolitan Street Railway Company		2,971,022.03	
Actual value at which such real estate is carried on books as an asset		2,971,022.03	

(The rest of real estate was acquired through consolidation of the above companies.)

Indebtedness in detail as follows:

General and collateral trust mortgage	$12,500,000.00	
Bills payable	3,138,899.21	
Accounts payable	1,944,234.52	
1st mtge. bonds, Met. C-town R. Co.	600,000.00	
2nd " " " " " "	300,000.00	
1st " " Lex. Ave. & Pav. F'y R. R. Co	5,000,000.00	
1st mtge. bonds, Col. & 9th Ave. R. R. Co.	3,000,000.00	
Guaranteed consol. mtge. bonds, B'way & 7th Ave. R. R. Co	12,500,000.00	
		$38,983,233.78

476 Includes 1st and 2d mtge. bonds of B'way Surface R. R $2,500,000
B'way & 7th Ave. R. R 2,000,000
South Ferry R. R 350,000

for which this company is liable.

Has any portion of above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate			$4,022,800.00
Block 380, ward map	No. 10 to 16 & 21	$52,800	
	No. 29 to 33		
381,	No. 29 to 31	31,500	
881,	No. 31	685,000	
1627,	No. 1	240,000	
1044,	No. 3, 17½ & 18 to 21	263,000	
1045,	No. 1	50,000	
4,	No. 29	60,000	
1901,	No. 38 to 41	134,000	
264,	No. 48	55,000	
1002,	No. 55, 55½ & 56	22,500	
2015,	No. 1	280,000	
1575,	No. 1	1,250,000	
669,	No. 21 to 30	70,000	
1497,	No. 9	350,000	
888,	No. 1	475,000	
Tracks,	No. 81	1,000	
Amounts invested in the stocks of other corporations which are taxed upon their capital			14,542,172.35
Amount invested in U. S. securities			
Total assets as shown above			$23,007,416.31
Deduct real estate, assessed value		4,022,800.00	
Deduct liabilities		38,983,233.73	
Deduct investments in stocks of other corporations which are taxed upon capital		14,542,172.35	
			57,548,206.08
Excess of liabilities, assessed value of real estate and stocks in other corporations			$34,540,789.77

The principal office or the place of transacting the financial business of the said corporation is situated in the 15th ward of the city of New York, at No. 621 Broadway.

CITY OF NEW YORK, *ss:*

I, Charles E. Warren, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

CHARLES E. WARREN.

Sworn to before me this 18th day of April, 1900.

DAN. W. PATTERSON,
Notary Public, New York County.

477 DEFENDANT'S EXHIBIT No. 4.

SCHEDULE A 1.

City of New York.

Department of taxes and assessment.

Commissionesr' office.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Metropolitan Street Railway Company, showing its condition for the purpose of assessment, on the second Monday of January, 1899. The Metropolitan Street Railway Company was created by the consolidation of the Houston, West Street & Pavonia Ferry Railroad Company, the South Ferry Railroad Company, the Broadway Railroad Company, the Metropolitan Crosstown Railway Company, the Lexington Avenue & Pavonia Ferry Railroad Company, and the Columbus and Ninth Avenue Railroad Company. Upon such consolidation the stock of the consolidating companies was surrendered by the stockholders, and new stock of the Metropolitan Street Railway Company was issued to the stockholders of said consolidating companies, share for share.

Total gross assets, including real estate		$22,143,851.48
Of above—real estate	$4,409,100.00	
personal property	3,354,179.13	
837 cars, valued at	$1,086,750.00	
Harness, " "	3,000.00	
821 horses " "	41,050.00	
Plows, sweepers, wagons	10,000.00	
Cash in bank	1,083,093.19	
Supplies on hand	234,498.50	
Bills receivable, &c.	895,787.44	
Shares in other corporations, taxable on their capital stock	14,380,572.35	
Capital stock actually paid in, or secured to be paid in		39,933,800.00
Amount of surplus earnings		
Rate of dividend for last year, or last annual dividend		1,823,841.00
Amount actually paid for real estate, purchased by the Metropolitan Street Railway Company		1,621,022.03
Actual value at which such real estate is carried on your books as an asset		1,621,022.03

(The rest of real estate was acquired through consolidation of the above companies.)

Indebtedness in detail as follows:

General and collateral trust mortgage	$12,500,000.00	
Accounts payable	1,896,256.42	
1st mortgage bonds, Met. Crosstown R. Co.	600,000.00	
2nd mortgage bonds, Met. Crosstown R. Co.	300,000.00	
1st mortgage bonds, Lex. Ave. & Pav. F'y R. R. Co.	5,000,000.00	
1st mortgage bonds, Col. & 9th Ave. R. R. Co	3,000,000.00	
Guaranteed consol. mtge. bonds, B'way & 7th Ave. R. R. Co.	12,500,000.00	
Includes 1st and 2d mtge. bonds of		
B'way Surface R. R. of	$2,500,000.00	
B'way & 7th Ave. R. R.	2,000,000.00	
South Ferry R. R.	350,000.00	
for which this company is liable.		$35,796,256.42

478 Has any portion of the above indebtedness been contracted or incurred in the purchase of non-taxable property or securities, or for the purpose of evading taxation? No.

Assessed value of real estate			$4,409,100.00
Block 380, ward map	No. 10 to 16 & 21 } No. 29 to 33 }	$53,100.00	
381,	No. 29 to 31.	34,500.00	
881,	No. 31.	685,000.00	
1627,	No. 1.	240,000.00	
1044,	No. 3, 17½, 18, 19, 20 & 21.	263,000.00	
1045,	No. 1.	50,000.00	
4,	No. 29.	60,000.00	
1901,	No. 38 to 41, 29 to 36, 24 to 27.	134,000.00	
264,	No. 48.	55,000.00	
1002,	No. 55, 55½ & 56.	22,500.00	
2015,	No. 1.	275,000.00	
1575,	No. 1.	250,000.00	
669,	No. 21 to 30.	62,000.00	
Tracks,	No. 81.	2,225,000.00	
Amounts invested in the stocks of other corporations which are taxed upon their capital.			14,380,572.35
Amount invested in U. S. securities			
Total assets, as shown above			$22,143,851.48
Deduct real estate, assessed value		$4,409,100.00	
Deduct liabilities		35,796,256.42	
Deduct investments in the stock of other corporations, which are taxed upon capital		14,380,572.35	
			54,585,928.77
Excess of liabilities, assessed value of real estate, and stocks in other corporations			$32,442,077.29

The principal office of the place of transacting the financial business of the said corporation is situated in the 15th ward of the city of New York, at No. 621 Broadway.

CITY OF NEW YORK, *ss:*

I, Charles E. Warren, the secretary of the said corporation, being duly sworn, do hereby certify and declare that the foregoing statement is in all respects just and true.

(Signed) CHARLES E. WARREN.

Sworn to before me this 23d day of March, 1899.

(Signed) AMBROSE F. McCABE,
Notary Public, N. Y. Co.

Adjourned to Thursday and Friday, October 10 and 11, 1901, at the capitol, in the city of Albany, N. Y., 11 a. m.

479 ALBANY, N. Y., *October* 10, 1900—11 a. m.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.*
The Metropolitan Street Railway Company
against
THE STATE BOARD OF TAX COMMISSIONERS. } Continued.

Defendant's counsel offered in evidence the statement by President Vreeland at stockholders' meeting, May 17, 1900, which is a correct copy of the statement referred to in President Vreeland's evidence.

Objected to as incompetent and irrelevant.

Objection overruled. Exception.

The following is a copy of the same:

Metropolitan Street Railway.

Statement of President H. H. Vreeland at Stockholders' Meeting, May 17, 1900.

It is proposed to bring the lines of the Third Avenue Railroad Company into the Metropolitan system by means of a long-term lease, and in fixing the terms of such a contract the officers of the Metropolitan Company have been guided by a uniform and convincing experience. The question to be considered was the
480 effect upon the Metropolitan net earnings of the step proposed. In the development of the Metropolitan system leases had several times been made and guarantees given which, if the roads so acquired were worth no more to the Metropolitan than they had been previously worth to their own stockholders, would not have been good business. But the same considerations of largely increased traffic and materially lessened expense per car mile which urge upon us now the lease of the Third Avenue, recommended every such earlier acquisition, and were in each instance abundantly justified by the resulting returns. What the development of the Metropolitan system has meant to the Metropolitan stockholders is witnessed in the figures of every year's business, not only in the great and regular annual increase of receipts, but also in the notable reduction of the percentage that operating expenses bear to the gross earnings.

It was in 1894 that the Metropolitan system reached something like its present proportions. It then included 131 miles of operated track; it now includes 224½ miles. Its gross earnings for the year ending June 30, 1894, were $5,398,465.52, but it succeeded in earning for its stock only $328,000, its operating expenses being almost 60 per cent., and its fixed charges nearly 34 per cent. of its gross earnings. Last year (June 30, 1899), with an operated mileage only 60 per cent. greater than in 1894, its gross earnings were

$13,525,524.25, its operating expenses were $6,408,711.02, its fixed charges were $4,477,757.37, and it is able to distribute to its stockholders $2,471,675. Its miles of track operated had increased from 131 miles to only 224½ miles, but its car mileage had increased from 17,383,590 to 41,760,856, and the percentage of its operating expenses to its gross earnings had fallen from 59.71 per cent. to 48.7 per cent. Even better results are assured for the current year of 1900, and the demonstration is complete that a line of surface railway in New York city run as a part of our system,
481 with our improved traction, by our methods and under our economies, is worth vastly more than can be obtained from it as a separate street railroad enterprise.

Under the proposed contract with the Third Avenue Company the Metropolitan will operate, for a term of 999 years, first, the main Third Avenue lines, extending from the post office at Park Row, along the Bowery and Third avenue to the Harlem river, along 125th street from river to river, and out Amsterdam avenue to Fort George, amounting to twenty-nine miles of track; second, the Dry Dock lines in and surrounding the business section of the city, sixteen miles; third, the lines of the 42d Street, Manhattanville & St. Nicholas Avenue Company from East 34th Street ferry along First avenue, through 42d street from river to river, through Broadway to Manhattan street, and through Amsterdam avenue from West 42d street to Manhattan street, and from the East river through 110th street to St. Nicholas avenue, thence to Manhattan street, and through Manhattan street to the North river, twenty-six miles; and, fourth, all the lines of the Union Railway Company beyond the Harlem river, amounting to 135 miles. The Metropolitan will also acquire the right to operate through eight miles of unconstructed route in the city of Yonkers, and twenty-eight miles of unconstructed route in the Bronx.

It is proposed to pay to the stockholders of the Third Avenue Company in consideration of this lease, for the first four years, whatever may be the net earnings of the leased lines; for the next two years five per cent. upon the outstanding capital stock of the company; for the next four years six per cent. upon the outstanding capital stock, and for the remainder of the term of the lease seven per cent. It is proposed also to guarantee the payment of the principal and interest of a fifty million dollar issue of bonds by the Third Avenue Company, secured by a mortgage upon its property.
482 Fourteen millions of the bonds thus issued will be retained by the trustee (the Morton Trust Company) for the protection of the funded debt of the Third Avenue as that debt matures; and of the $35,000,000 remaining, there will avail for improvements and betterments, after the entire floating indebtedness of the company has been discharged, at least $15,000,000 cash in hand. This sum will be sufficient to complete the traction changes now in progress, to make other necessary improvements, and to establish the connections with Metropolitan lines.

It will not be doubted that the terms of this lease are better than

could have been obtained for the Metropolitan at any time heretofore. They are much better than were obtained in the cases of several other lines which are to-day highly valuable parts of our system. It will presently be shown by comparisons between the earnings of our mechanical roads and our horse roads, that it is not so much the franchise from which profits are drawn as it is the improved tractions and the connections established with other parts of the system. That a line of roads has failed to do well under other conditions argues little as to what can be obtained from it as a part of the Metropolitan. In order to secure several of our great thoroughfare lines we were compelled to give guarantees, the financial wisdom of which was much questioned at the time. But the officers of this company were not basing their expectations on what those roads had been doing considered as separate organizations, so much as on what they could do when run in connection with our entire system, fed by our lines in all directions, equipped with the most improved traction, and conducted by a management which made an economy in one branch of its business and for the benefit of one line felt in every other branch and in every other line. The wisdom of every lease made has been proved by experience, and
483 there is no line of thoroughfare road brought by lease under Metropolitan control the gross earnings of which are not today more than twice as great as they were the year before we took control, or which, after all the expenses of the lease and all taxes have been paid, does not earn for our stockholders several times as much money as it had ever earned for its owners.

The Sixth Avenue line will earn for the current year, $1,600,000 as against $718,898 which it earned as a separate line prior to the lease. The Eighth Avenue will earn $1,600,000 as against $744,860. The Fourth Avenue will earn $2,100,000 as against $845,919. The Second Avenue will earn $1,450,000 as against $700,023. We are paying to the stockholders of the Twenty-third Street line a fixed rental of $186,500, or 18 per cent. on its capital stock. And yet, when we have paid this rental, have discharged the interest on its funded debt and have paid its taxes, no less a sum than $300,000 comes into the treasury of the Metropolitan as net income. The Sixth Avenue line, running from the neighborhood of the city hall to the Central Park and there abruptly terminating, conducted separately from the system, could never be of great value to its stockholders. But connected at 59th street with our Amsterdam Avenue cars and with our Lexington Avenue cars, so that the residents of the great and growing west side and of the thickly populated sections east of Central Park can swiftly and conveniently reach the Sixth Avenue shopping district, its business enables us to pay an annual rental of $145,000 and all taxes, and at the same time return to the stockholders of the Metropolitan $800,000 in annual profits. A somewhat larger sum is earned from the Fourth Avenue line under similar conditions of profit to its own stockholders and bondholders. Most of these leases differ from the Third Avenue lease,

not only in respect of the larger percentage which is required
484 to be paid upon their stock, but also in that the cost of their traction improvement was made to fall upon the Metropolitan. The Third Avenue contract, however, so provides that at least $15,000,000 will be available from the sale of Third Avenue bonds, secured by a mortgage upon the Third Avenue property only, with which these necessary improvements will be made.

It is idle to speculate upon the infinite possibilities or business developments from the lines and franchises brought by this contract under Metropolitan management. The Third Avenue's West Side lines, running above 42d street through Broadway and Amsterdam avenue, have had no other connection with the great downtown business section of the city than through Third Avenue and the Bowery. They will now be connected with Tenth avenue, Ninth avenue, Eighth avenue, Seventh avenue, Sixth avenue, Broadway, Thirty-fourth street, Twenty-third street, Third avenue and the dry dock, while the growth of the business of the great Bronx country, connected as it will be across the Harlem river with all our thoroughfare lines, admits of no definite prediction. The Union Railway Company has now under mechanical operation 135 miles of track running through all the principal streets of the Bronx villages. Growing in population with marvelous rapidity, these villages are fast becoming one great city. Ten years ago the population of the Bronx was scarcely more than 60,000. To-day it must be all of 250,000. In 1895 plans were filed with the building department for 1,400 new buildings, at an estimated cost of $8,000,000. Last year plans were filed for 2,500 new buildings and at an estimated cost of $20,000,000. The real estate valuation for assessment purposes is already $125,000,000, a sum exceeding the real estate value of the entire city of Cleveland. The Bronx is to-day in point of population the fourth community of the State of New York.

During the first period of the Third Avenue lease, we shall
485 be engaged in improving the leased properties, in connecting them with our present lines and in conforming their methods to ours. We shall not undertake to say what the net returns of this period of adjustment and development will be; but to that sum, whatever it is, our liability to Third Avenue stockholders is limited. As to further results—no doubt whatever is entertained that the experience of former transactions of a similar kind will be repeated in this new application of the company's policy.

It is further proposed to increase the capital stock of the Metropolitan Company from $45,000,000, to $52,000,000, or in the sum of $7,000,000, for the purpose of continuing and completing improvements already in progress, the most important of which is the conversion of our twenty-three miles of cable road into underground electric.

The economy which this change of traction will effect will more than pay the interest at 7 per cent. on the increased capitalization. The average cost of operating our electric lines per car mile is 12.99 cents. The average cost of cable traction is 17.99 cents. We are

to-day operating 22.73 miles of cable road, from which we obtain about 10,500,000 car miles per annum. The change from cable traction to underground electric, by which *in* apparent economy of $525,000 per annum will be *affected* is not only expedient for that purpose, but necessary for the purpose of harmonious operation. Every improvement which brings the company's lines more completely under the one traction system tends both to earn and to save money. Its economies by shortening some routes, by prolonging others, by facilitating convenient schedules, by substituting fast for slow service, commodious for small and inconvenient cars and cheap for expensive power, are great and far reaching.

In anticipation of this change, we have already expended for feeders, ducts and transformer stations the sum of $918,000.
486 A power house capable of taking care of the entire system under electrical operation is substantially finished. Transformer stations have been completed at Front street and at 50th street, and two others will be required at 25th street and at Houston street respectively. When this improvement has been made, and the Broadway, the Columbus Avenue and the Lexington Avenue lines have been thus provided with the new traction, eighty-six miles of our system will be under electrical operation, and there will remain 131.40 miles of horse railway as to which the problem of a satisfactory mechanical traction will continue to engage careful study and experiment.

How urgent a problem this is plainly appears in the comparative figures of net earnings from that part of our system now mechanically operated, and that part over which we are running horse cars. Although only eighty-six miles of road are under mechanical operation as against 131 miles operated by horses, there was obtained 26,084,311 car miles from the mechanically operated roads for the period of nine months ending March 31st, 1900, as against only 7,738,845 car miles from the horse railroads. The gross receipts from passengers during the same period were $8,708,652.37 as against $1,882,900.46, and the net earnings from mechanical traction were $2,221,661.45, while the net loss from horse traction was $263,895.02. A sufficient reason for this discrepancy appears in the fact that it cost 19.43 cents per car mile to operate by horse traction as against thirteen cents per car mile by electric traction.

Naturally, the officers of the company are giving close and constant attention to the questions raised by this significant fact. Not only would it be possible greatly to reduce the operating expenses per car mile of several crosstown lines now run by horses if they could be provided with a suitable mechanical traction, but as a further result their business would be greatly increased. Our experience in providing underground electric traction for 59th
487 Street and 23d Street Crosstown lines, however, demonstrated that the removal and replacement of the pipe obstructions along the avenues were so costly as to render underground crosstown building almost prohibitive, and we are, in consequence, making extensive experiments with traction systems which will obviate this

great outlay, as for instance, on the Twenty-eighth and Twenty-ninth Street lines, with compressed air, and on the Thirty-fourth Street line where we are preparing to test the storage battery system. It is expected that within a few weeks the Thirty-fourth Street Crosstown line will be ready for operation by this system.

The company has expended $460,000 in relaying this line with new rails, in equipping cars, and installing a charging station at the 42d Street depot. It is believed that this system can be operated economically and successfully, and if the result on the Thirty-fourth Street line justified this expectation, the reconstruction of the remaining horse car lines can be accomplished without heavy cost. For the company has already sufficient power in operation and contracted for to supply its entire system. Other important economies will result from the improvements arranged for and contemplated. The temporary power plants now being operated at heavy cost can be soon abandoned, and the small stables, car barns, and division offices necessary to the conduct of horse lines, can be so concentrated, when mechanical traction has been provided, as to release for more profitable uses a great deal of valuable property.

This statement of the policy of the Metropolitan and its results has been made from the point of view of the stockholders only. But the company's public relations are no less interesting. The citizen who contributes fifteen per cent. of his annual income to the State is entitled to feel that he is fully discharging his public duty.

In 1899 the Metropolitan paid upon its properties and busi-
488 ness into the public treasury, $834,655.29. It devoted $117,000 to the work of cleaning and paving the public streets. Its annual contributions to the public are a sum equal to forty per cent. of its payments to its stockholders. And as the direct result of its policy of bringing under one management the various lines of its system it gave in 1899 free transportation by transfers to 128,365,161 passengers. That is, the franchises connected and developed as a system gave rides free in 1899 which, under the old conditions, would have cost the public $6,418,258.05.

CHARLES E. WARREN recalled by defendant.

Examined by Mr. FIERO:

Q. Memorandum of amounts received on shares of stock and bonds as set out *on* in Schedule L?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $311,369.00.

Q. Statement of amount received from each separately for the year ending June 30, 1899?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The amount of dividends and interest received for year ending June 30, 1899, on stock and bonds set out in Schedule L, was, namely:

6 bonds Bleecker Street, 23rd Street	$420.00
100 shares Bleecker Street, 23rd Street	150.00
14062 shares B'way & 7th Ave. R. R. Co. stock	140,620.00
31 shares 23rd Street railway stock	558.00
50 shares 8th Ave. railroad stock	750.00
4000 shares 42nd St. & Grand St. Ferry Co. cap. stock	72,000.00
3000 shares C. P. N. & E. R. R. R. Co. cap. stock	12,560.00
489 4615 shares Central Crosstown R. R. Co. cap. stock	46,150.00
369 shares C. P. N. & E. R. R. R. Co. cap. stock	3,321.00
430 shares 42nd St. & Grand St. Fy. Co. cap. stock	7,740.00
2 1st mortgage bonds B'way Surface $1000 ea.	100.00

Q. Are the valuations given as to stock and bonds in Schedule L value at par or actual value?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Value given is cost value, which, for the purpose of this proceeding only, is considered to be actual value.

—. On page 8 of the report, please state source in detail from which rentals are derived?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. From real estate and from use of tracks under traffic agreements by other corporations.

Q. The report of the Metropolitan at page 6 gives under head, "Cost of real estate and improvements and cost of equipment, $35,265,379.67." Is it exclusively that of the Metropolitan Company, or does it include the cost of the properties known as the Metropolitan system; if the latter, what companies are included in the statement?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $35,265,379.67 constitutes the original cost of real estate, construction of tracks, cost of equipment and all subsequent renewals, reconstruction, new equipment and improvements thereon, and all real estate subsequently acquired and now used for
490 power houses and otherwise connected with the operation of the roads of the Metropolitan. It includes the Metropolitan Company exclusively. There are no other companies.

Q. Mr. Warren, in Schedule A, proceedings before the city board of tax commissioners, makes the total value of tangible assets, real and personal, $23,007,416.31. In the report for 1899 the value of

the real property is given, as to that included in the special franchise, $5,500,000; as of that not included in the special franchise, $5,057,000; tangible personal, $3,333,837.47; making the total a little less than $14,000,000—which statement, if either, is correct?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The item in Schedule A, proceedings before the city board of tax commissioners, of $23,007,431 is made up of the following items:

Assessed value of real estate	$4,022,800.00
Personal property which is itemized in that schedule	4,442,443.96
Shares in other corporations	14,542,172.35

In the report of 1899 the item of $5,500,000 is the cost of reproduction of the real property included in the special franchise; the item of $5,057,000 is the real estate not included in special franchises, and the item of $3,333,837.47 is the tangible personal property; and the difference between this last item and the amount of the tangible personal property given in Schedule A consists mainly in the difference in the amount of cash in bank. Both statements are correct.

Q. What consideration did Daniel Lamont pay for the franchise of the Broadway surface road, and what consideration was paid by that organization upon receiving title?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

491 A. The Broadway Surface Railroad Company was dissolved by an act of the legislature and the Broadway road was sold by the directors as trustees of that corporation at public auction in the city of New York and purchased by Mr. Daniel S. Lamont. The terms of sale are set forth in the deed which has been placed in evidence (Plaintiff's Ex. No. 68) and the deed expressed the consideration as having been paid of $25,000. The property was sold subject to the mortgages, liens, incumbrances and conditions thereon, which are expressed in the deed to Mr. Lamont.

Q. What consideration was paid to Mr. Lamont by the present corporation for that franchise?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Subsequently, the Broadway Railway Company was organized and on the 8th day of April, 1891, Mr. Daniel S. Lamont and his wife conveyed to the latter corporation the property purchased at the above sale. This deed has been introduced in evidence also as Plaintiff's Ex. No. 68, and it states the terms of the sale and the consideration to be paid on the delivery of that deed by Mr. Lamont to the Broadway Railway Company.

Q. On page 8, Schedule G, under head of disbursements, appears surplus $737,065.83. Is that actual surplus remaining after payment of all sums, or does it include moneys derived from sale of bonds and excess of bonds paid?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It was cash on hand at that time.

Q. Eliminating from the statement in Schedule G matter of sale of bonds and payment for new construction, there is an apparent surplus of several hundred of thousand dollars; is that not
492 an actual surplus remaining in the hands of the company? Is there not an income during the year ending June 30, 1899, considerably in excess of that used for payment of interest on bonds and dividends on stock? What is the actual amount of such surplus and the debentures redeemed?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The statement in Schedule G is a cash statement of receipts and disbursements, not a statement of assets and liabilities. There is an income during the year ending June 30, 1899, considerably in excess of that used for payment of interest on bonds and dividends on stock. The surplus is $167,380.86; the amount of debentures redeemed from cash received on the increase of the capital stock was $6,000,000.

Q. What were the gross receipts from operation of the properties leased to the Metropolitan Railway Company for the fiscal year ending June 30, 1899?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The leased lines are operated as divisions, over not only the franchise roads of leased companies, but also over the routes of other companies, never contemplated when the lines were originally leased or purchased, and in nowise do they represent the earnings of separate roads or franchises. These divisions are constantly changing as conditions change through demands of traffic, change of terminals, acquirement of other lines, change of motive power and in transfer points and otherwise, and these lines, so called, to date, have not been the same in two successive years. This statement applies to the gross receipts of all leased and operated lines; for instance, the Metropolitan line earnings include the Lenox Avenue line,
493 which is a part of the Sixth Avenue road; and the Amsterdam Avenue line earnings are included in Sixth Avenue line, although Amsterdam avenue is a part of the Ninth Avenue line. The nearest answer to be given to this question is as follows:

The gross earnings for year ending June 30, 1899, of operating lines or divisions designated as follows, were:

Metropolitan St. R'y	$4,846,373.51
Broadway & 7th Ave	121,231.56
Sixth Ave	1,287,950.97
Eighth Ave	1,160,902.68
Ninth Ave	577,711.69
Second Ave	1,358,404.29
C. P. N. & E. R. R. R.	716,587.51
42d St. & Grand St. F'y	283,584.04
N. Y. & Harlem	1,906,191.60
23d Street	631,031.00
B. St. & F. R'y	114,813.60

Q. For previous year?

Objected to as incompetent, immaterial and irrelevant. Objection overruled. Exception.

A. The gross earnings for the year ending June 30, 1898, of operating lines or divisions designated as follows were:

Metropolitan St. R'y	$5,208,266.32
Broadway & 7th Ave	92,091.38
Sixth Ave	1,083,981.53
Eighth Ave	709,292.50
Ninth Ave	462,190.91
Second Ave	296,934.29
C. P. N. & E. R. R.	712,863.38
42d St. & Grand St. F'y	285,606.38
N. Y. & Harlem	1,016,739.23
23d Street	597,429.90
B. St. & F. F'y	122,933.85

Q. Also for the subsequent year?

Objected to as incompetent, immaterial and irrelevant. Objection overruled. Exception.

494 A. The gross earnings for year ending June 30, 1900, of operating lines or divisions designated as follows were:

Metropolitan St. R'y	$4,861,317.57
Broadway & 7th Ave	68,051.59
Sixth Ave	2,029,986.95
Eighth Ave	1,669,080.81
Ninth Ave	272,238.66
Second Ave	1,470,977.98
C. P. N. & E. R. R. R.	771,298.74
42d St. & Grand St. F'y	282,468.11
N. Y. & Harlem	2,141,451.72
23d Street	793,936.10
B. St. & F. F'y	96,791.90

Q. What were gross receipts of what is known as the Metropolitan line for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $4,846,373.51.

Q. What is the actual value of the stocks of this company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This question as to the value of the stock was answered at the last hearing at 172½–175. It is conceded, for the purpose of this proceeding only, that the actual value of the bonds was the same as the value quoted therefor in the *Financial Chronicle* for the date January 7, 1900, viz., 119.

Q. What were the gross receipts from operation of the properties leased by the Second Avenue Railway Company to the Metropolitan for the fiscal year ending June 30, 1899? For the previous year?

495 Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were gross receipts of what may be known as the Second Avenue line for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $1,358,404.29.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding that the actual value was the same as the quoted value, which, according to the *Financial Chronicle* for the date referred to, was: Stock, 200 bid, 205 asked; first mortgage bonds, 107 bid, 109 asked; consolidated mortgage bonds, 116 bid, 119 asked.

Q. In the report there is open account to the amount of $3,406,976.45. What does that mean? From whom is that due? Please state in detail in what way were the assets represented by that sum acquired. Does that sum belong to the Second Avenue stockholders, or does it go to the treasury of the Metropolitan under the terms of the lease? To whom does it belong?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The account covers money spent for construction and equipment and carried as an open account. It shows that that amount

of money was spent in improving and bettering the Second Avenue railroad under the terms of the lease.

496 Q. And, as a matter of fact, what sum was realized during the year ending June 30, 1899, by the Metropolitan as profit upon the lease of the Second Avenue?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. What were the gross receipts from operation of the properties leased by the Sixth Avenue Railway Company to the Metropolitan for the fiscal year ending June 30, 1899? For the previous year? Also for subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were gross receipts for what may be known as the Sixth Avenue *line* for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $1,287,950.97.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900? What was the actual value of the bonds?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is stipulated, for the purpose of this proceeding, that the actual value was the same as the value for this date as stated in the *Financial Chronicle*, viz: Stock, 209 bid, and 212 asked; the company had no bonds outstanding.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan as profit upon the lease of the Sixth Avenue Company?

Objected to as incompetent, immaterial and irrelevant.
497 Objection overruled. Exception.

A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. What were the gross receipts from operation of the properties leased by the Eighth Avenue Railway Company to the Metropolitan for the fiscal year ending June 30, 1899? For the previous year? Also for the subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained, for reasons stated by Mr. Vreeland at previous hearing.

Q. What were the gross receipts for what may be known as the Eighth Avenue *line* for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $1,160,902.68.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded, for the purpose of this proceeding, that the actual value was the same as the value for this date, as stated in the *Financial Chronicle*, viz: Stock, 380 bid, 400 asked. Certificates of indebtedness, 108 bid, 110 asked.

Q. From what source other than rentals does the Eighth Avenue derive an income—other than rental paid by the Metropolitan? Please specify items making up balance of income over $215,000 of rental paid by Metropolitan, stating from what source derived? You will note that at page 9 of the report the rental from
498 the Metropolitan is stated $215,000; on page 8 it appears that rentals, etc., received amount to $268,750?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. In the year 1899 the Eighth Avenue Railroad Company received one-quarter's payment of rent in their report *in* July 1, 1898, which properly belonged to report of June 30, 1898; this made the total for the year $268,000. The difference between $215,000 and $268,000 belongs to the previous year, which is short an entry of rent for that one quarter.

Q. There appears to be a surplus of $54,277.16 during that fiscal year. Does that belong to the stockholders, or does it go into the treasury of the Metropolitan Company?

A. This sum, $54,277.16, is the balance of rent and interest on a mortgage held by the company after paying its corporate expenses, and belongs to the Eighth Avenue Railroad Company, and offsets a deficit of the previous year by reason of the entry explained above.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan as profit upon the lease of the Eighth Avenue Co.?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained, for the reasons stated at the previous hearing.

Q. What were the gross receipts from operation of the properties leased by the Twenty-third Street Railway Company to the Metropolitan during the year ending June 30, 1899? Like statement for year ending June 30, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

499 Q. What were gross receipts for what may be known as the Twenty-third Street line for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $631,031.00.

Q. What are the receipts of the Twenty-third Street from the operation of the property leased to the Metropolitan Street Railway Company, after deducting expenses of operation, and what disposition is made of such receipts?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. Under heading of Liabilities, Schedule D, page 6, it appears there is due lessee company for additions and betterments $1,011,932.52. Is that for permanent improvements upon the right of way? If so, should not that sum be added to the value of the tangible real property of Twenty-third Street Company upon the street, or outside the street, as the fact may be? What part should be so added to the value of the property in the street? How much of that sum was expended for equipment and personal property?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This sum was for permanent improvements upon the right of way and for new equipment; it was expended, viz:

Track and roadway construction	$351,942.85
Underground construction	498,776.99
Engineering expenses	5,509.96
Roadway	1,073.74
Building, operation of road	37,166.48
Motor cars	117,562.50

500 Said items, except that which relates to equipment, should be added, less depreciation, to the value of the tangible property.

Q. The cost of real estate and improvements is given at $1,751,270.73; cost of equipment, $318,726.46; value of the entire

real and personal is given at less than $1,000,000. Does that indicate depreciation of property?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. What was the actual value of the stock of that company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded, for the purpose of this proceeding, that the actual value was the same as the value for this date, as stated in the *Financial Chronicle*, viz: Stock, 398 bid, 420 asked; debentures, 106 bid, 108 asked. The bonds are redeemable on six months' notice and have not been quoted, but for the purpose of this proceeding only, are conceded to have the same actual value as the debentures.

Q. What sum was realized during the year ending June 30, 1899, as profit by the Metropolitan upon the lease of the Twenty-third Street Company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. Please state amount received by Metropolitan from each of leased lines in excess of operating expenses, fixed charges and taxes. That is to say, amount of net profit to Metropolitan after
501 paying expenses properly chargeable to each company, aside from expense of the Metropolitan Company proper?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were the gross receipts of the Bleecker Street and Fulton Ferry Railroad Company for year ending June 30, 1899? For previous year and for subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What was the cost of operation? What was the net profit after payment of all expenses chargeable to it, to the 23d Street Railway Company, or the Metropolitan, as the case may be?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What was the actual profit realized from operation over and above the sum of $62,500?

Objected to as incompetent, immaterial and *and* irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What was the actual value of the stock and bonds of that company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

502 A. It is conceded, for the purpose of this proceeding, that the actual value was the same as the value for this date, as stated in the *Financial Chronicle*, viz: Stock, 35 bid, 40 asked; bonds, 100 bid, 102 asked.

Q. Does the Metropolitan own the majority of the stock of this company and receive a dividend at the rate of 1½ per cent.? Is that dividend earned over and above the cost of operation?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Metropolitan Company owns one hundred shares of the stock of this company on which it received a dividend of 1½ per cent. This dividend is guaranteed by the Metropolitan. This dividend is not earned over and above the cost of operation.

Q. How do you account for discrepancy in cost of real estate and improvements and cost of equipment $1,801,931.58 and value of tangible real property $200,000, followed by statement that it has no property other than its tracks?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $1,801,939.58 appears on the books of the company as the cost of real estate, improvements and cost of road and equipment. The entries were made under the former management and no other information is available.

Q. What is the agreement with reference to rental under which $62,500 is paid it as rental?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The road of this company was leased to the 23d Street Company on January 10, 1876. Under the terms of the lease the 23d Street Company guaranteed 1½ per cent. annually on the
503 stock and the payment of interest on the bonds. The aggregate amount of such interest and dividend is $62,500. The

Metropolitan Company has since leased the road of the 23d Street Company and assumes the obligations of the Bleecker Street lease.

Q. What were the gross receipts of the Broadway and Seventh Avenue Railroad Company for the year ending June 30, 1899? For the previous year? For the subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What was the actual value of the stock and bonds of that company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding that the actual value was the same as the value for this date as stated in the *Financial Chronicle*, viz.: Stock, 230 bid, 240 asked; first mortgage bonds, 104 bid, 105 asked; second mortgage bonds, 110 bid, 112 asked. Consolidated mortgage bonds, 120.

Q. What is meant by the charge under liabilities in Schedule D, due lessee company for additions and betterments, $1,582,775.757? What additions and betterments does this represent? Is this million and a half dollars given in statement of value of tangible real property included in special franchises on basis of cost of reproduction under Schedule K, which appears to be $1,500,000. What, if any portion of it was for additions and betterments to property outside the special franchise? Please state in detail?

504 Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This amount was spent by the Metropolitan Company for the additions and betterments to the Broadway and Seventh Avenue road and real estate. This is the amount for which the Metropolitan Company claims the Broadway & Seventh Avenue Company is liable to it by reason of that amount of money having been spent for additions and betterments. It is a balance on the cable construction. The $1,500,000 mentioned in Schedule K is the cost of reproduction and the property itself included in the general cost of additions and betterments and improvements that were made by the Metropolitan Company on the Broadway and Seventh Avenue road. No part of the one and a half million is for property outside of the special franchise; that is, for the cost of tangible property connected with the special franchise. There is no connection between the $1,500,000 mentioned in Schedule K and the $1,582,775.75 mentioned in Schedule D.

Q. What were the expenses of operation of this road *from* year ending June 30, 1899? For the preceding and subsequent years? What sums did it pay as net profit to the Metropolitan Company during each of the three years above referred to?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were receipts from passengers carried year ending September 30th, 1899, by the Broadway Surface Railroad Company, as that was originally incorporated?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This company was dissolved by act of the legislature
505 passed May 4, 1886. The Metropolitan Street Railway Company operates the former franchises of that company and the Broadway Railway Company. The receipts of this company are included with those of the South Ferry Company, and no separation is made or is feasible.

Q. What was the total number of passengers carried during that time by that road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is impossible to state, as the operation of this company has been merged with the operation of the South Ferry Company.

Q. Do the receipts as given on page 8 of the schedule of the report of the Central, Crosstown Railroad Company, $633,308.12, include receipts of leased lines? Do expenses as given under head "Disbursements," same page, and schedule, include expenses of leased lines?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. What is the actual value of the stock on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding that the actual value was the same as the value for this date as stated in the *Financial Chronicle*, viz.: Stock, 265 bid, 280 asked; first mortgage bonds, 125 bid, 130 asked.

Q. Does the Central Crosstown pay rentals and if so to what companies? Is any rental paid to the Bleecker Street and Fulton Ferry Railroad Company for the use of its tracks? Does this company
pay any percentage on gross receipts to the city? If so, how
506 much? From what is the income derived on which such payment is made?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It pays the 23d Street Company for use of the Bleecker Street tracks on 14th street $2,500 a year. The company pays percentages on gross receipts to the city 3 per cent. on the Central Crosstown line. The income from which such payment is made is the receipts from passengers.

Q. What were the gross earnings of the Central Park, North and East River R. R. Co., for year ending June 30th, 1899? For preceding and following years?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What was the value of its capital stock and bonds on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding that the actual value was the same as the value for this date as stated in the *Financial Chronicle*, viz.: Stock, 198 bid; 205 asked; bonds, 107.

Q. What is meant by due lessee company for additions and betterments $681,356.55 in Schedule D? Is that included in the $727,000 value of tangible real property included in special franchise, Schedule K? If so, what property did this company have before these additions and betterments were made and what was its value? Was any portion of the $681,356.55 expended for property
507 not in special franchise? If so, please state in detail what sums and for what purpose?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $681,356.55 in Schedule D is the amount charged against the lessor company by the lessee company for reconstruction of its lines. There is no connection between the item in Schedule D and the item in Schedule K, except that the tangible real property included in the special franchise was paid for to some extent by the item referred to as included in Schedule D. The company did have property before these additions and betterments were made. Its value cannot be stated. The portion of $681,356.55 expended for property not in the special franchise was

Engineering expenses	$6,820.19
Right of way	11,683.45
Equipment	78,375.00

Balance, underground and roadway construction and represents property, not the value of tangible property included in special franchise.

Q. What sum is realized by the Metropolitan from the Central

Park, North and East River Company after payment of operating expenses, fixed charges and taxes?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. What were gross receipts of Christopher and Tenth Street Railroad Company for the year ending June 30th, 1899? What were gross receipts for the year ending September 30, 1899?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

508 A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. What were operating expenses for each of these periods?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What sum was paid to the city as percentage on gross earnings? What sum was paid by the Central Crosstown Railroad Company? What sum, if any, was paid the Metropolitan?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Central Crosstown Company paid the city for it $7,853.46 own account and for account of the Christopher and Tenth Street $6,873.60 on gross earnings. No sum was paid to the Metropolitan Company by either of these companies. The Central Crosstown Company is not a part of the Metropolitan system.

Q. What was the actual value of the stocks and bonds of the Christopher and Tenth Street Railroad Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding that the actual value was the same as the value for this date as stated in the *Financial Chronicle*, viz.: Stock, 168 bid, 174 asked. There are no quotations for the bonds of this company. It is conceded for the purpose of this proceeding that the value of the bonds is 105.

Q. What were the gross earnings of the New York and
509 Harlem railroad (city line) for the year ending June 30, 1899? For the previous year and subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. Did this company have any real estate outside of that reported as being in the street; so far as is leased to the Metropolitan Company referring only to the street car line, and not to the property of the Harlem Railroad Company as such?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The lease of the Metropolitan Company covers for a term of three years depots, stables, car houses, repair shops and other buildings of Fourth avenue, between 32d and 33d streets, in the city of New York; also depots, stables, repair shops and buildings on Madison avenue, between 85th and 86th streets, extending 204 feet on the westerly side of Madison avenue, and 220 feet on 85th and 86th street.

Q. What was the total value of the tangible personal property of this company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The tangible personal property employed in connection with the portion of the city line of the New York and Harlem Railroad Company is owned by the Metropolitan Company. No officer of the Metropolitan Company has any means of knowing the value of the tangible personal property of the New York and Harlem R. R. Company, city line.

Q. What were the expenses of operation of this property
510 derived from the New York and Harlem during these years (1898, 1899 and 1900)? What surplus was paid over to the Metropolitan during these periods?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were the earnings of that portion of this line upon which percentage on gross earnings is paid to the city?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Metropolitan Company paid the city 5 per cent. on $531,778.90.

Q. Is the Metropolitan Company in any way responsible or is the surface line in any way chargeable with either the principal or interest of the funded debt of the Harlem road of $12,000,000?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No, except that the mortgage which is given to secure the funded debt is a lien on the city line, which has been leased to the Metropolitan Company.

Q. What was the actual market value of the stock and bonds of the Twenty-eighth and Twenty-ninth Street Crosstown Railroad Company on the second Monday of January, 1899? For the previous year and for the subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The stock has no market value. It is owned by the Metropolitan Company and has been during the year referred to. It is conceded for the purpose of this proceeding that the bonds
511 have an actual market value equal to the quoted value last given by the *Financial Chronicle* for the second Monday of January, 1900, viz., 113.

Q. What did the Metropolitan pay for the 15,000 shares of stock of this company owned by it and when it was purchased?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. These stocks were purchased with other stocks and no apportionment of the consideration was made. The total sum paid and the stocks purchased appear in Schedule L attached to the return. The purchase was made in 1896 and 1897.

Q. How much new construction was paid from earnings during the year ending June 30th, 1899?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. None.

Q. In Schedule D cost of real estate and improvements and cost of equipment is fixed at $3,000,000. Are the entire assets of the company correctly stated in Schedule K at $175,000, aside from $31,855.91 of personal.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. Does this property, valued at a little less than $210,000, earn 5 per cent. on $1,500,000, as appears in Schedule F?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No, money is earned, not only from the operation of this company proper, but also from the operation of its cars on various other lines of the Metropolitan system. And in this operation
512 transfers are given at various points of intersecting lines.

Q. What was the actual value of the stock of the Fulton

Street Railroad Company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. All of this stock is owned by the Metropolitan Company. There have never been any quotations. It is conceded for the purpose of this proceeding only that the value of the bonds are par.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan as profit from the operation of the Fulton Street Company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Nothing.

Q. What property, if any, represents the difference between the $34,461 property reported and the $1,000,000 of capital stock and bonds of the company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The value of the transfer connections and the privilege of operating its cars over other lines of the Metropolitan Company system and the guarantee of its bonds by the Metropolitan Street Railway Company.

Q. Under maintenance and reconstruction or new construction paid from earnings are the figures $30,891.20. How much of that, if anything, was new construction paid from the earnings?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Nothing.

513 Q. What sum was paid by the Metropolitan Company for the stock of the Fulton Street Railway Company at the time it was acquired?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This stock was acquired with the stocks of the other companies mentioned in Schedule L attached to the return.

Q. What, if any, consideration entered into the purchase of the control of the Fulton Street Company by the Metropolitan other than the assumption of bonds and payment of the stock?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Nothing.

Q. At the time of the purchase by the Metropolitan what amount of interest was in default upon the bonds of that company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Metropolitan Co. did not make the purchase.

Q. What sum, if any, by way of interest was paid or assumed by the Metropolitan Co.?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Nothing.

Q. What was the date when the stock of this company was acquired by the Metropolitan?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. In 1896 and 1897.

Q. What were the gross receipts from operation of the properties leased by the Ninth Avenue Railroad Company to the Metro-
514 politan for the fiscal year ending June 30, 1899? For the previous year? Also for subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were gross receipts for what may be known as Ninth Avenue *line* for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $577,711.69.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded, for the purpose of this proceeding only, that the actual value was the same as the quoted value, which, according to the *Financial Chronicle* for the date referred to, was stock 195 bid, 205 asked. There are no bonds.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan, as profit upon the lease of the Ninth Avenue Company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for the reasons stated at the previous hearing.

Q. What were the gross receipts from operation of the properties leased by the 34th Street Crosstown Railroad Company to the Metro-

politan for the fiscal year ending June 30, 1899? For the previous year? Also for the subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

515 A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at last hearing.

Q. What were gross receipts for what may be known as the 34th Street Crosstown line for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $377,037.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. There have never been any quotations of the stock or bonds of this company. It is conceded, for the purpose of this proceeding only, that the actual value of the bonds of this company is 110.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan as profit upon the lease of the 34th Street Crosstown Company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This company is not leased by the Metropolitan Company.

Q. What is the length of the 34th Street Crosstown road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. .97 miles of single track.

Q. Does that company pay $50,000 interest on bonds, something over $92,000 rental, with surplus of $21,337.68 out of its earnings?

516 Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. These moneys are paid out of the operation of the 34th Street line, not out of the operations of that company. There is no surplus from the operation of the company's road. This $21,337.68 refers to cash on hand in the treasury to meet current obligations.

Q. What property, if any, represents the difference between $66,000 of tangible property and the capital stock and bonds of $2,000,000?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The property right, among other things, of running its cars over the other lines of the Metropolitan and having transfers of passengers with it and the connection of its tracks with the lines above referred to at various points.

Q. What sum was paid by the Metropolitan Company for the 10,000 shares of stock of the 34th Street Crosstown road, and when was that stock acquired?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This stock was acquired in 1896 and 1897.

Q. What was the value of that stock on June 30, 1899, and on second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This stock has never been on the market and there are no quotations.

Q. What were the gross receipts from operation of the properties leased by the 42d Street and Grand Street Railway Company
517 to the Metropolitan for the fiscal year ending June 30, 1899? For the previous year? Also for subsequent year?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known and cannot be ascertained for reasons stated by Mr. Vreeland at previous hearing.

Q. What were gross receipts for what may be known as the 42d Street and Grand Street Ferry *line* for like period?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $283,584.04.

Q. What was the actual value of the stock of this company on the second Monday of January, 1900? What was the actual value of the bonds of that company on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded for the purpose of this proceeding only, that the actual value was the same as the quoted value, which, according to the *Financial Chronicle* for the date referred to, was, stock, 395 bid, 410 asked, the stock being guaranteed by the Metropolitan Company. The bonds are not quoted. It is conceded for the purpose of this proceeding only, that their value on the second Monday of January, 1900, was 115.

Q. What sum was realized during the year ending June 30, 1899, by the Metropolitan as profit upon the lease of the 42d Street & Grand Street Ferry Company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Not known, and cannot be ascertained for reasons stated at the previous hearing.

518 Q. It appears by the report of the 34th Street Crosstown Railroad Company that it pays in rental the sum of $92,966.17. Is that paid for the use of the 42d Street & Grand Street Ferry Railroad Company's tracks. To whom does that sum belong? Does it go to the stockholders of the 42d Street & Grand Street Ferry, or is it paid over to the Metropolitan? Does it go to make up part of the $134,640 for the 18 per cent. on capital stock which is received by the 42d Street & Grand Street Ferry from the Metropolitan? There is no statement in the 42d & Grand Street report relative to this sum?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $92,966.17 is paid for the use of the 42d Street & Grand Street Ferry railroad tracks and depots. It is paid direct to the Metropolitan Company, and it forms a part of the 18 per cent. which is paid by the Metropolitan Company only as rental to the 42d Street & Grand Street Ferry. There is no reason for a statement in the 42d Street & Grand Street report relative to this, as it is a leased line.

By Mr. PAGE:

Q. Is the system of bookkeeping of the Metropolitan system such that the books show the respective gross earnings of each separate special franchise of the component corporate companies?
A. No.
Q. Is it possible to establish such a system of bookkeeping as will show the earnings of each separate special franchise?
A. No.

Adjourned to Friday, October 18, 1901, 11 a. m., at the capitol in the city of Albany, N. Y.

519 (*Testimony for Defendant.*)

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.*
The Metropolitan Street Railway Company
against
THE STATE BOARD OF TAX COMMISSIONERS. } Continued.

ALBANY, N. Y., *October* 18, 1901—11 a. m.

The following further testimony is given on behalf of the defendants, no objection being made that the witnesses giving same are not produced.

Q. What was the value of the tangible real property of the Third Avenue Railroad Company which should be included in the special franchise on the basis of cost of reproduction on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No officer of the present management has any knowledge of these matters, and none of the engineers who had to do with them is now in the employ of the company.

Q. What amount of money has been expended in the change from cable to electricity on above date, including the cost of subways?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

520 A. No persons connected with the company can give this information and there are no records on the books of the company which will show it.

Q. In Schedule K, at page 10 the value of the track is estimated at $100,000 double track; that is to say, at $50,000 per mile, while on the same page cost of cable road alone is estimated at $200,000 per mile. Could that cable road have been reproduced for anything like the sum named?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No.

Q. Has not the change to electricity made the road much more valuable than $50,000 per mile? What was its actual value at that time, and was it not, as matter of fact, entirely changed to electricity on that date?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The change to electricity has made the road more valuable. While the change to electricity had not been made on June 30th, 1899, the date as of which the report was made, it had been made in January, 1900.

Q. State value of tangible property in the streets fully?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This question has already been answered.

Q. Under Schedule G, at page 8, there is a statement, moneys advanced for account of other companies, $2,066,149. To what companies was that money advanced, and was the asset collectible?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This money was advanced to the Forty-second Street,
521 Manhattanville & St. Nicholas Avenue Railway Company, the Dry Dock, East Broadway & Battery Railroad Company and the Union Railway Company; it was in part collected.

Q. In what companies was stock and bonds held by the Third Avenue, as stated in Schedule G, $963,576.80?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. In securities of the Forty-second Street, Manhattanville & St. Nicholas Avenue Railway Company, the Dry Dock, East Broadway & Battery Railroad Company, the Union Railway Company and Tarrytown, White Plains and Mamaroneck Railway Company.

Q. Attention is called to statement in Schedule L, where the amount of stock and bonds is given as $357,000. Why the discrepancy in the statement?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The amount in Schedule L is additional to the amount mentioned in Schedule G above referred to.

Q. In Schedule D value of stock and bonds of other companies is given $9,769,632.42. Were your accounts and bills receivable stated at $2,187,093.80 (Schedule D) good assets?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. They have not yet been paid.

Q. What is meant by the item "Loans, $1,623,225" in Schedule G?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is money borrowed for purposes of construction.

522 Q. Should not the $1,222,873.93 be added to the value of tangible property as shown in Schedule K, and, in addition thereto, must there not be added such sums as may have been expended between October 1st and second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The question apparently refers to Schedule N, and with this correction the answer is, yes.

Q. What amount of bonds were outstanding on second Monday of January, 1900, and what amount of stock?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. $5,000,000 bonds; $16,000,000 stock.

Q. Had the Third Avenue paid dividends for five years previous to the date of this report continuously, and if so, at what rate?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes; in 1899, 7 per cent. on $12,000,000 stock; in 1898, 8 per cent. on $10,000,000; in 1897, 8¾ per cent. on $10,000,000; in 1896, 9¼ per cent. on $9,000,000; in 1895, 8 per cent. on $7,500,000.

Q. What, if any, improvements were made between July 30, 1899, and January, 1900, as to the track and property subject to special franchise tax, and was there not a large increase in the price of materials entering into its construction between the price estimated by your engineer and the actual value of materials as they were in January, 1900.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

523 A. Yes; improvements were made in that time in the matter of reconstruction and change of motive power. There was some increase in the price of materials during the period specified. The engineering force of this period is no longer in the employ of the company. There is no record showing the details of this improvement.

Q. What was the value of the stock and bonds of the Forty-second Street, Manhattanville & St. Nicholas Avenue Railway Company, on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded, for the purpose of this proceeding, that the value was the same as the quoted value for that date in the *Financial Chronicle*, viz: Stock, 70 bid, 75 asked; first mortgage bonds, 115 bid, 118 asked; second mortgage bonds, 82 bid.

Q. What sum had been expended in the relaying of the tracks

and putting in electricity on this road on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No present officer of the road has knowledge of these matters, and it is impossible to state from the records. For the purpose of this proceeding, it is estimated that the amount was several million dollars.

Q. Was it not a fact that underground trolley was completed from Fort Lee ferry to 59th street, and that several hundred thousand dollars had been expended between 59th street and the 34th Street ferry, both on the Boulevard line and the Tenth Avenue line, including the Boulevard line and the Tenth Avenue line and 42d street.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

521 Q. In Schedule N you say that there had been no changes between June 30, 1899, and October 1, 1899, in real estate or otherwise affecting the purpose of this report; is that correct? Had not very large sums been expended during that period and previous to that time, and thereafter before January, 1900, in reconstructing the line over the street?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. There had been made expensive changes.

Q. Is it not a fact that during the year immediately preceding June 30, 1899, the earnings of this road had been very materially decreased by reason of new construction going on, and that upon the completion of the new construction they were very largely increased?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. You give value of tangible real property included in special franchise on basis cost of reproduction at $60,000. Is that intended to be value of the tracks as they were before any changes were made? That is to say, while it was a horse road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $60,000 appears to be value of the road as in operation at the time the report was made and at that time the horse road was still in operation; the change to underground electric in certain places was in progress.

Q. Your attention is called to the fact that you have not given us a report for 1900 of this company, except the one given by Grant, as receiver, for a very brief period?

A. This report will be supplied if required.

525 Q. There is no statement in Schedule G with regard to the cost of new construction paid from sources other than earnings. Was not the work progressed to a considerable extent, and had not a very considerable amount been paid on account of it at the date of the report? When was this road, or any part of it, completed so as to be operated by electricity?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The work had progressed to a considerable extent, but it was being done by the Third Avenue R. R. Co. and necessarily considerable amounts of money had to be expended. The first part of the road to be operated by electricity was operated in November, 1899.

Q. What, if any, improvement was made between July 30, 1899, and January, 1900, as to the track and property subject to special franchise tax, and was there not a large increase in the price of materials entering into its construction between the prices estimated by your engineer and the actual value of materials as they were in January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Considerable improvement was made in the matter of change of motive power. There was some increase of price of materials between the dates referred to. Details of improvements cannot be stated for reason above given.

Q. What was the value of the stock and bonds of the Dry Dock, East Broadway & Battery Railroad Co. on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

526 A. It is conceded, for the purpose of this proceeding, that the value was the same as the value for this date stated in the *Financial Chronicle*, viz: bonds, 116 bid; 118 asked; stock, 125 bid; 150 asked.

Q. Your attention is called to the value of the tangible real property included in special franchises on basis of costs of reproduction in Schedule K, as estimated at $52,000, and to the fact, that in the report for the following year to this board, same property is valued at $358,000, less 15 per cent.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. As stated with respect to the Third Avenue and 42d Street Companies, the management has changed since the report of 1899

was made. The report for the later year is believed to be more nearly correct.

Q. Of what does the property not included in special franchise on basis of cost of reproduction given at $668,135.57 consist? Schedule K states "estimated." By whom is it estimated and is that a correct estimate? Please give us new and revised estimates on this property.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The property referred to consists of real estate and depots, stables and car-houses thereon. The estimate is approximately correct. The maker of the original estimate is not known.

Q. What is the property not connected with the special franchise used for? Has it any earning capacity outside of its use for railroad purposes, and if so what?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

527 A. The property not connected with the special franchises consists of land with the offices, stables and car-houses thereon used for the purpose of operating the railroad. One stable is used for outside purposes for which a rental is received.

Q. Is any part of this railroad used by a part of the Third Avenue system? If so, by what company?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No.

Q. How much of the property not connected with the special franchise is used in the operation of the road? How much for other purposes? Is there a rental paid from any part of it?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This property so used has been already referred to. The rental received is $1,787 per year.

Q. What, if any, improvements were made between July 30, 1899, and January, 1900, to the track and property subject to special franchise tax, and was there not a large increase in the price of materials entering into its construction between the price estimated by your engineer and the actual value of materials as they were in January, 1900.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. There were no improvements. There was some increase in the price of materials.

Q. What was the value of the stock and bonds of the Union Railway Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

528 A. It is conceded, for the purpose of this proceeding only, that the value was the same as the quoted value for this date as stated in the *Financial Chronicle*, viz.: first mortgage bonds 113 bid, 114 asked. There have been no quotations of this stock since January, 1898.

Q. When did the Union Railway Company acquire this property and what price was paid for it?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Union Railway Company acquired this property through consolidation with other companies which took place in 1892.

Q. What is the meaning of the item $3,600,000 at foot of Schedule D?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This means that securities of the Union Railway Company in this amount, par value, were issued in 1892 for the construction and equipment of its lines.

Q. For what purpose was the loan of $1,353,500 made and upon what was it applied?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The loan was for the construction and equipment of the lines of companies of the present Union Railway system acquired subsequent to 1892, and partly for similar purposes in respect of the Union Company.

Q. By Schedule K you appear to have 27 miles double track overhead trolley; the value of that property you estimate at $100,000, less than $8,000 per mile? What was the fair value of that property per mile on the second Monday of January, 1900?

529 Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The figures above referred to were based upon the costs of reproducing the track and structure above referred to in its then condition. The fair value of that property per mile, new, on the second Monday of January, 1900, it is estimated, would have been $16,000, or thereabouts, per mile of single track.

Q. What, if any, improvement was made between July 30, 1899, and January, 1900, to the track and property subject to special franchise tax, and was there not a large increase in the price of materials entering into its construction between the price estimated by your engineer and the actual value of materials as they were in January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. There was no improvement aside from ordinary improvement, except that about seven miles of new road were constructed. There was some increase in the price of materials between July 30, 1899, and January, 1900.

Q. What was the value of the stock and bonds of the Westchester Electric Railroad Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is conceded, for the purpose of this proceeding only, that the value was the same as the quoted value for this date as stated in the *Financial Chronicle*, viz.: bonds, 112 bid, 113 asked. There have been no quotations on the stock of this company since 1893.

Q. What, if any, improvements were made between July 30,
530 1899, and January, 1900, to the track and property subject to special franchise tax, and was there not a large increase in the price of materials entering into its construction between the price estimated by your engineer and the actual value of materials as they were in January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The only improvement made, aside from the ordinary improvements, was 3¼ new miles of track. There was some increase in the price of materials between July 30, 1899, and January, 1900.

Q. What was the value of the stock and bonds of the Southern Boulevard Railroad Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is stipulated, for the purpose of this proceeding only, that the value of these securities was the same as the quoted value for that date stated in the *Financial Chronicle*, viz.: bonds, 108 bid, 109 asked. There have been, so far as known, no quotations of the stock of this company.

Q. What was the value of the stock and bonds of the Yonkers Railroad Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. There have been no quotations, so far as known, on the bonds of this company, but it is conceded, for the purpose of this proceeding only, that they have a value of 108. The stock of this company has never been quoted.

Adjourned to Friday, October 25, 1901, 11 a. m., at the capitol, in the city of Albany, N. Y.

531 DEF'TS' EX. MET. CO. REP'T TO R. R. COM'S.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY
vs.
THE STATE BOARD OF TAX COMMISSIONERS.

ALBANY, N. Y., FRIDAY, *October* 25, 1901.

Adjourned to Thursday, October 31, 1901.
Further adjourned to Friday, November 8, 1901.

ALBANY, N. Y., FRIDAY, *November* 8, 1901.

Defendant's counsel offered in evidence the statement of the Metropolitan Street Railway Company to the State board of railroad commissioners for the year ending December 31, 1899.

Objected to as immaterial, incompetent and irrelevant.

The following is a copy of the same:

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1899.

1899.

Gross earnings from operations		$13,204,096.12
Operating expenses (excluding all taxes)		6,493,258.15
Net earnings from operations		6,710,837.97
Income from other sources than operation		673,267.50
Gross income from all sources		7,384,105.47

532 Deductions from income, as follows:

Interest on funded debt		$1,055,000.00	
Taxes	On property used in operation of road	416,077.56	
	On earnings and capital stock	235,981.44	
	Other than above	5,722.47	
Rentals		2,608,135.00	4,320,916.47
Net income from all sources			3,063,189.00
Net income as previously reported, for preceding quarters in this fiscal year			

Operating cost 49.24 per cent. of earnings (excluding all taxes).

Operating cost 51.235 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

General Balance Sheet.

December 31, 1899.

Assets.

Cost of road and equipment	$35,269,327.82
Stocks and bonds of other companies	14,542,172.35
Other permanent investments	
Supplies on hand	177,350.84
Accrued interest	
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	1,996,591.06
Bills receivable	67,737.46
Office furniture	18,102.67
Improvements added and betterments charged to leased lines	3,276,064.82
533 New construction on lines owned and leased to be distributed	
Profit and loss (deficiency)	18,310,072.12
	$73,657,419.14

Liabilities.

Capital stock, common	$44,928,900.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	3,206,736.67
Interest on funded debt, due and accrued	401,274.99
Dividends unpaid	786,255.75
Due for wages and supplies	
Due companies and individuals (on open account)	709,163.30
Rentals due and accrued	149,911.66
Profit and loss (surplus)	1,725,176.77
	$73,657,419.14

Defendant's counsel offered in evidence the quarterly reports and the annual report of the Metropolitan Street Railway Company to the State board of railroad commissioners for the year ending December 31, 1900.

Objected to as incompetent, immaterial and irrelevant. Also, as relating to matters which took place during the year subsequent to the year the taxes of which are being reviewed in these *certiorari* proceedings. Also, as not relating to each special franchise of the company separately considered. Objection overruled. Exception.

The following is a copy of same:

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1900.

Gross earnings from operation	$3,268,260.79
Operating expenses (excluding all taxes)	1,552,436.00
Net earnings from operation	1,715,824.79
Income from other sources than operation	128,539.92
Gross income from all sources	1,844,364.71

534 Deductions from income, as follows:

Interest on funded debt		$263,750.00	
Taxes	On property used in operation of road	130,110.48	
	On earnings and capital stock	61,469.66	
	Other than above	1,238.22	
Rentals		658,398.32	1,114,966.68
Net income from all sources			729,398.03
Net income, as previously reported, for preceding quarters in this fiscal year			1,703,251.93

Operating cost 47.50 per cent. of earnings (excluding all taxes).

Operating cost 53.56 per cent. of earnings (including taxes on all property actually used in operation of road and on earning of capital stock).

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending June 30, 1900.

1900.

Gross earnings from operation	$3,612,878.81
Operating expenses (excluding all taxes)	1,713,119.35
Net earnings from operation	1,899,759.46
Income from other sources than operation	152,236.63
Gross income from all sources	2,051,996.09

Deductions from income, as follows:

Interest on funded debt		$263,750.00	
Taxes	On property used in operation of road	130,145.46	
	On earnings and capital stock	66,787.83	
	Other than above	1,238.22	
Rentals		662,565.00	1,124,486.51
Net income from all sources			927,509.58
Net income, as previously reported, for preceding quarters in this fiscal year			2,432,649.96

535 Operating cost 47.42 per cent. of earnings (excluding all taxes).

Operating cost 52.86 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30, 1900.

1900.

Gross earnings from operation		$3,445,369.22
Operating expenses (excluding all taxes)		1,555,035.46
Net earnings from operation		1,890,333.76
Income from other sources than operation		162,936.66
Gross income from all sources		2,053,270.42
Deductions from income, as follows:		
Interest on funded debt	$263,750.00	
Taxes—On property used in operation of road	130,145.46	
Taxes—On earnings and capital stock	71,286.46	
Taxes—Other than above	1,238.22	
Rentals	662,565.00	1,128,985.14
Net income from all sources		924,285.28
Net income as previously reported, for preceding quarters in this fiscal year		

Operating cost 45.14 per cent. of earnings (excluding all taxes).

Operating cost 49.55 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

536 State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1900.

1900.

Gross earnings from operation	$3,635,939.72
Operating expenses (excluding all taxes)	1,699,649.37
Net earnings from operation	1,936,290.35
Income from other sources than operation	150,090.27
Gross income from all sources	2,086,380.62

Deductions from income, as follows:

Interest on funded debt		$263,750.00	
Taxes	On property used in operation of road	133,660.99	
	On earnings and capital stock	76,855.77	
	Other than above	1,635.06	
Rentals		662,565.00	1,138,466.82
Net income from all sources			947,913.80
Net income as previously reported for preceding quarters in this fiscal year			924,285.28

Operating cost 46.75 per cent. of earnings (excluding all taxes).
Operating cost 52.53 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

537 *General Balance Sheet.*

December 31, 1900.

Assets.

Cost of road and equipment	$35,371,587.31
Stocks and bonds of other companies	
New constructed lines owned and leased to be distributed	21,800,098.36
Other permanent investments	13,769,173.84
Supplies on hand	159,285.33
Accrued interest	
Improvements, additions and betterments charged to leased lines	770,932.10
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	14,218,581.84
Bill- receivable	84,549.06
Office furniture	18,590.53
Profit and loss (deficiency)	
	$86,192,798.37

Liabilities.

Capital stock, common	$44,962,700.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	5,306,736.67
Interest on funded debt due and accrued	401,274.99
Dividends unpaid	786,847.25

Due for wages and supplies	
Due companies and individuals (on open accounts)..	736,126.24
Rentals accrued	170,744.98
Bond proceeds to credit of Met. St. R'y Co. lessee...	
3d Ave. construction account	9,997,237.40
Profit and loss (surplus)	2,081,130.84
	$86,192,798.37

538 State of New York.

Metropolitan Street Railway Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1900.

Gross earnings from operation		$13,962,448.54
Operating expenses (excluding all taxes)		6,520,240.18
Net earnings from operation		7,442,208.36
Income from other sources than operation		593,803.48
Gross income from all sources		8,036,011.84
Deductions from income, as follows:		
Interest on funded debt	$1,055,000.00	
Taxes... On property used in operation of road	524,062.39	
Taxes... On earning and capital stock	276,399.72	
Taxes... Other than above	5,349.72	
Rentals	2,646,093.32	4,506,905.15
Net income from all sources		3,529,106.69
Net income as previously reported, for preceding quarters in this fiscal year		

Operating cost 46.7025 per cent. of earnings (excluding all taxes).

Operating cost 52.075 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings of capital stock).

539 *General Balance Sheet.*

December 31, 1900.

Assets.

Cost of road and equipment	$35,371,587.31
Stocks and bonds of other companies	
New constructed lines owned and leased to be distributed	21,800,098.36
Other permanent investments	13,769,173.84
Supplies on hand	159,285.33

Accrued interest	
Improvements, additions and betterments charged to leased lines	770,932.10
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	
Cash on hand	14,218,581.84
Bills receivable	84,549.06
Office furniture	18,590.53
Profit and loss (deficiency)	
	$86,192,798.37

Liabilities.

Capital stock, common	$44,962,700.00
Capital stock, preferred	
Funded debt	21,750,000.00
Loans and bills payable	5,306,736.67
Interest on funded debt due and accrued	401,274.99
Dividends unpaid	786,847.25
Due for wages and supplies	
Due companies and individuals (on open accounts)	736,126.24
Rentals accrued	170,744.98
Bond proceeds to credit Mt. St. R'y Co. lessee	
3d Ave. construction account	9,997,237.40
Profit and loss (surplus)	2,081,130.84
	$86,192,798.37

540 (DEF'T'S EX. REPT. MET. SYSTEM TO R. R. COM'S.)

Defendant's counsel offered in evidence the reports made to the State board of railroad commissioners for the year ending December 31st, 1899, by the following companies:

Twenty-eighth & Twenty-ninth Street Crosstown R. R. Co.
Thirty-fourth Street Crosstown R. Co.
Sixth Avenue R. Co.
Fulton Street R. Co.
Central Crosstown R. Co.
Third Avenue Railroad Company.
Forty-second Street, Manhattanville & St. Nicholas Ave. R. R. Co.
Dry Dock, East Broadway and Battery R. R. Co.
Westchester Electric R. R. Co.
Union Railroad Company of New York City.
Southern Boulevard R. R. Co.
Yonkers Railroad Co.

Consisting in each case of:

1. Report for quarter ending March 31, 1899.

2. Report for quarter ending June 30, 1899.
3. Report for quarter ending September 30, 1899.
4. Report for quarter ending December 31, 1899.
5. Statement for the year ending December 31, 1899.

Objected to as incompetent, immaterial and irrelevant. Objection overruled. Exception.

The quarterly and annual reports of each company are considered as one exhibit and the reports of the above-mentioned companies are marked "Metropolitan Record, Defendant's Exhibit No. 5–13, inclusive, November 8, 1901—J. M. R."

Defendant's counsel offered in evidence the reports made to the State board of railroad commissioners for the year ending December 31st, 1900, by the following companies:

Twenty-eighth and Twenty-ninth Street Crosstown R. R. Co.
Thirty-fourth Street Crosstown R. Co.
Sixth Avenue R. Co.
Fulton Street R. Co.
541 Central Crosstown R. Co.
Third Avenue Railroad Company.
Forty-second Street, Manhattanville & St. Nicholas Ave. R. R. Co.
Dry Dock, East Broadway and Battery R. R. Co.
Westchester Electric R. R. Co.
Union Railroad Company of New York City.
Southern Boulevard R. R. Co.
Yonkers Railroad Company.

Consisting in each case of:

1. Report for quarter ending March 31, 1900.
2. Report for quarter ending June 30, 1900.
3. Report for quarter ending September 30, 1900.
4. Report for quarter ending December 31, 1900.
5. Statement for the year ending December 31, 1900.

Objected to as incompetent, immaterial and irrelevant.

Also, as relating to matters which took place during the year subsequent to the year the taxes of which are being reviewed in these certiorari proceedings.

Objection overruled. Exception.

The quarterly and annual reports of each company are considered as one exhibit, and the reports of the above-mentioned companies are marked "Metropolitan Record, Defendant's Exhibit No. 17–28, inclusive, November 8, 1901, J. M. R."

Defendant's counsel offered in evidence the report of the Twenty-third Street Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1436.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1471.

Objected to as irrelevant, immaterial and improper and as relating to matters which took place during the year subsequent to the

year the taxes of which are being reviewed in these certiorari proceedings.

Objection overruled. Exception.

542 Defendant's counsel offered in evidence the report of the Twenty-eighth and Twenty-ninth Street Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1365.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1395.

Objected to as immaterial, irrelevant and improper, and as relating to matters which took place during the year subsequent to the year the taxes of which are being reviewed in these certiorari proceedings.

Objection overruled. Exception.

Defendant's counsel offered in evidence the report of the Fulton Street Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1341.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1371.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Thirty-fourth Street Crosstown Railway Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1361.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1391.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Bleecker Street and Fulton Ferry Railroad Company to the State board

543 of railroad commissioners for the year 1899, page 1398.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1426.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Forty-second Street and Grand Street Ferry Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1411.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1446.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Central Park, North and East River Railroad Company to State board of railroad commissioners for the year ending *June 30, 1899, page* 1398.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1426.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Ninth Avenue Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1419.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1455.

544 Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Eighth Avenue Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1405.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1437.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Sixth Avenue Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1429.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1466.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Second Avenue Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1426.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1462.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Broadway and Seventh Avenue Railroad Company for the year
545 ending June 30, 1899, to the State board of railroad commissioners, page 1380.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1408.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the New York and Harlem Railroad Company to the State board of railroad commissioners, for the year ending June 30, 1899, page 1417.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report, 1900, page 711.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Central Crosstown Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1319.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1345.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Christopher and Tenth Street Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1401.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

546 Defendant's counsel offered a like report for the year 1900, page 1429.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Third Avenue Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1250.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered in evidence a like report for the year 1900, page 1276.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Forty-second Street, Manhattanville & Nicholas Avenue Railway Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1337.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1363.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report on the Dry Dock, East Broadway and Battery Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1331.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1357.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

547 Defendant's counsel offered in evidence the report of the Union Railway Company of New York City to the State board of railroad commissioners for the year ending June 30, 1899, page 1271.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1293.

Same objection as to similar report heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the reports of the Westchester Electric Railroad Company to the State board of railorad commissioners for the year ending June 30, 1899, page 1296.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1325.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Southern Boulevard Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1206.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1231.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Tarrytown, White Plains and Mamaroneck Railway Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1245.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

548 Defendant's counsel offered a like report for the year 1900, page 1271.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Defendant's counsel offered in evidence the report of the Yonkers Railroad Company to the State board of railroad commissioners for the year ending June 30, 1899, page 1307.

Objected to as immaterial, irrelevant and improper.

Objection overruled. Exception.

Defendant's counsel offered a like report for the year 1900, page 1336.

Same objection as to similar reports heretofore offered.

Same ruling and exception.

Adjourned to Wednesday, November 20, 1901, 11 a. m., at the capitol, in the city of Albany, N. Y.

549 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY
vs.
THE STATE BOARD OF TAX COMMISSIONERS.

ALBANY, N. Y., WEDNESDAY, *Nov.* 20, 1901.

GEORGE E. PRIEST, recalled:

Cross-examination (continued) by the ATTORNEY-GENERAL:

Q. At page 140, line 15, the question is, "Q. Was a franchise valuable in proportion as it (the company) had agreed to pay the city a greater or lesser percentage of its receipts?" Your answer is, "Yes, sir." Is your answer complete?

A. No; I meant that within certain limits, if a company agreed to pay a large percentage of gross receipts on acquiring a special franchise it was regarded by us as some evidence that the special franchise was valuable. I say within certain fixed limits, because I have in mind that the amount of percentage of gross receipts agreed to be paid if in excess of a certain amount would not, of course, leave the company enough to pay operating expenses.

Q. At page 141, line 12, the question is, "Q. The greater the sum agreed to be paid in the lease in such cases as that the larger
550 the assessment, which in the judgment of the board, was placed upon the line covered by the lease? A. Yes, sir." Is that statement intended to exclude the fact that you considered other elements?

A. No.

Q. At page 136 you state that the final valuations were considered as of the value on January 7, 1900. Is that date absolutely correct?

A. I find that the second Monday of January fell on the 8th of January, 1900, instead of the 7th.

Q. At page 146, line 14, question is asked: "Q. Didn't the fact that after the lease it was operated by the Metropolitan Street Railway Company add, in the judgment of the board, to the value of that special franchise? A. Yes, sir; I think it did." Was it the fact of operation by the Metropolitan Street Railway Company as such, or the fact that it became a part of a system, which was considered as adding to its value?

A. Yes, sir; the fact that it became a part of a successfully operated system.

Q. At page 279, question is asked: "Q. Where you used the term 'merge' you include franchises that were owned by lease or contract? A. Yes, sir." Did you mean by that answer to say that you assessed franchises held by a corporation under a lease or by contract to the corporation holding the property under such lease or contract, or is it to be confined to those cases where the corporations have actually become merged into a single corporation?

A. We assessed special franchises to the corporations by which they were owned, without regard to whether they were leased to or under contract with other corporations. We so assessed them whenever we had sufficient facts to do so, and, I think, that is true with regard to the entire Metropolitan system, so-called; we assessed the franchises to the corporations by which they were owned at that date. My recollection is that that is true with regard to all
551 of the companies whose assessment is in litigation before this referee at this time. This statement does not refer to certain corporations erroneously assessed to the Edison Electric Illuminating Company, the facts in regard to which appear in the Edison case.

Q. At page 279, line 11, question is asked: "Q. If the earnings of the company were larger, then the valuations were made larger; and if they were smaller, the valuations were made smaller? A. I think I may answer yes to that proposition." Is that absolutely correct, independent of other considerations relating to the corporations under consideration in each particular case?

A. It is not a fact that the earnings of the company absolutely controlled. It was an important consideration, but not the sole consideration.

Q. Did you mention in your evidence, as one of the elements considered in the assessment, the cost of reproduction of the tangible property in the streets? What is the fact with regard to that being considered as an important element in making the assessments? I ask you this question in connection with your evidence at pages 138, 139, where you are asked with regard to the earning power and market value of stocks and bonds of the company as being two very important elements?

A. I should add to my answer relative to that matter at page 139 that we always considered the cost of reproduction of the tangible property in connection with the assessment.

Q. Have you caused an examination to be made as to the number of franchises owned by individuals assessed by your board for the year 1900?

A. Yes, and I find that it was about one hundred, instead of several hundred.

Q. I call your attention to your statement that your board was engaged in the assessment of special franchises from April to
552 October of that year. Is it not a fact that work upon the assessment of special franchises was commenced immediately after the filing of the reports of the corporation about November 1, 1899?

A. Yes; we began our work very shortly after that and continued it, devoting our time to that matter, except as we were engaged in other official duties, up to October 1, 1900. The major part of the eleven months, intervening, was spent in that work. There were 4,751 special franchise assessments to be made, and they were situated in nearly a thousand different tax districts through the State.

The following further testimony is given on behalf of the defendants, no objection being made, that the witnesses giving same are not produced.

Q. What constituted the 6th Avenue line referred to in the evidence of Mr. Vreeland, page 501, line 9, where it is stated, "This line will earn for the coming year $1,600,000 as against $718,898, which it earned as a separate road, prior to the lease." Please state what is included in the statement as to the line, and what part of the roads operated other than those leased from the 6th Avenue line, belong to other companies, giving in detail the company to which each part operated belongs. That is to say, a statement of what goes to make up the line, separating the portions belonging to different companies.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The line above referred to, at the time of the report, namely, May 17, 1900, was operated on the following streets:

From Amsterdam avenue and 126th street to Battery place and Greenwich street, with branches as follows: From 125th
553 street and Amsterdam avenue to 125th street and Broadway; from 59th street and 6th avenue to 59th street and 1st avenue; from West Broadway and Canal street to Canal street and Broadway.

From 126th street and Amsterdam avenue to 59th street and Columbus avenue, owned by the 9th Avenue R. R. Co.

From 59th street and 9th avenue to 59th street and 6th avenue, owned by the Central Park & N. & E. R. R. Co.

From 59th street and 6th avenue, to 59th street and 1st avenue, owned by the Central Park & N. & E. R. R. Co.

From 125th street and Broadway to 125th street and Amsterdam avenue, owned by the Metropolitan Street Railway Co.

From 3rd street and McDougal street to 3rd street and Sullivan street (single track) belongs to the Broadway & 7th Avenue Railroad Company.

From 3rd street and Sullivan street to West Broadway and Watt street (3rd street and Sullivan street to 3rd street and West Broadway being single track) belongs to the Metropolitan St. R'y Co.

From 4th street and 6th avenue to 4th street and McDougal street (single track) belongs to the Bleecker St. and Fulton Ferry R. Co.

From 4th street and McDougal street to 3rd street and West Broadway (single track) belongs to the Metropolitan Street R'y Co.

From West Broadway and Broome street to West Broadway and Canal street belongs to the Broadway and 7th Ave. R. Co.

From West Broadway and Canal street to West Broadway and Chambers street ½ belong- to 8th Ave. R. Co.

From West Broadway and Chambers street to West Broad-
554 way and Vesey street ½ of one track is owned by the 8th Ave. R. Co.; other track owned by the Met. St. R'y Co.

From West Broadway and Vesey street to West Broadway and Fulton St. belongs to the Met. St. R'y Co.

From West Broadway and Fulton street to Fulton street and Church street (single track) belongs to the 9th Ave. R. Co.

From Church and Fulton streets to Battery place and Greenwich street, belongs to the Met. St. R'y Co.

From West Broadway and Barclay St. to Barclay and Church Sts. (single track) belongs to Broadway and 7th Ave. R. Company.

From Church and Barclay streets to Church and Vesey streets (single track) ½ belongs to 8th Ave. R. Co.

From West Broadway and Canal street to Broadway and Canal street, ½ belongs to the 8th Ave. R. Co.

From Vesey and Church Sts. to Church and Fulton Sts. belongs to the Met. St. R'y Co.

The above includes the electric lines only. In addition the 6th Ave. R. Co. owned and operated horse car lines from 6th Ave. and 3rd street to Varick and Canal streets, with a branch over tracks of the Met. St. R'y Co. from Varick and Watt streets to Debrosses St. ferry, North river, and horse car track on Vesey street from West Broadway to Broadway, ½ owned by the 8th Ave. R. Co.

On Church street, from Barclay street to Chambers street from Church street to West Broadway (single track) ½ belongs to 8th Ave. R. Co.

The Sixth Avenue line was operated upon parts of routes belonging to seven different companies, including the Sixth Avenue Railroad Company, and each of these companies owned one or more special franchises.

555 Q. Same inquiry as to 8th Avenue line, which, it is stated at the same page, earns $1,600,000, as against $744,860.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The line above referred to, at the time of the report, namely, May 17, 1900, was operated on the following streets:

From 159th street and 8th avenue to Battery place and Greenwich street, with a branch from 148th street and 8th avenue on Macombs Dam Bridge road to Central bridge.

From Canal to Varick streets to Canal and Broadway ½ belongs to 6th Ave. R. Co.

From Canal street and West Broadway to West Broadway and Chambers street ½ belongs to 6th Avenue R. Co.

From West Broadway and Chambers street to West Broadway and Vesey street ½ of road belongs to 6th Ave. R. Co. The second track belongs to the Met. St. R'y Co.

From West Broadway and Vesey street to West Broadway and Fulton street track belongs to the Met. St. R'y Co.

From West Broadway and Barclay St. to Barclay and Church Sts. (single track) belongs to Broadway and 7th Ave. R. Co.

From West Broadway and Fulton street to Fulton and Church Sts. (single track) belongs to 9th Ave. R. Co.

From Barclay and Church streets to Church and Vesey Sts. (single track) ½ belongs to 6th Ave. R. Co.

From Vesey and Church streets to Battery place and Greenwich street belongs to the Met. St. R'y Co.

556 The 8th Ave. line was operated upon parts of routes belonging to five different companies, including the Eighth Avenue Railroad Company, and each of these companies owned one or more special franchises.

Q. Same inquiry as — the Second Avenue line, which, it is stated, will earn $1,450,000, as against $700,023.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The line above referred to, at the time of the report, namely, May 17, 1900, was operated on the following streets:

From 2nd Ave. and the Harlem river to the post office, with a branch from Bowery on 8th street and Astor place to Broadway, and on 96th street from 1st and 2nd Aves.

From 8th street and Bowery to post office track belongs to the N. Y. & H. R. R. Co.

The above refers to electric lines only. In addition there are horse-car lines owned and operated from 125th street and 1st Ave. on 1st Ave to 59th street from 23d street and 1st avenue (single track) on 1st avenue and Allen street to Grand street also the Fulton Street Ferry line on Fulton street, Water street, Ferry street, Pearl street, New Bowery, Bowery, Grand street, Forsyth street, Houston street and 2d Ave. to 9th St.; and also on Chrystie street, Pearl street and South street, which is the return of the above route to South ferry.

Of the latter route the following is owned by other companies: Track on Fulton street, Water street, Ferry street, Pearl street and New Bowery belongs to Bleecker street and Fulton Ferry Railroad Co.

The track on the Bowery is owned jointly by the 2nd and 3rd Ave. R. Companies.

557 The track on Grand street belongs to the Dry Dock Co.

The track on Houston street belongs to Ave. C R. Co.

On South street the track is owned by the Bleecker St. and Fulton St. Ferry Co.

This company also owns and operates tracks as follows:

On South street, from Peck slip, to Oliver St., owned by the C. P. N. & E. R. R. Co.

On Oliver street from South St. to Chatham square. On Chatham square from Bowery to Worth St., owned by the 3rd Ave. R. Company.

The track on Park row from Worth street to Pearl street is owned jointly by the 3rd Ave. and Dry Dock Companies. Pearl street from Park row to New Bowery (single track), and on Worth street from Chatham square to Broadway.

On Ave. A from 92nd street to 86th street, and on 86th street from Ave. A to 2nd Ave.

The Second Ave. line was operated upon parts of routes belonging to nine different companies, including the Second Avenue Railroad Company, and each of these companies owned one or more special franchises.

Q. Same question as to the 23rd St. line as to which it is stated that $300,000 surplus goes into the treasury of the Metropolitan as net income?

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The line above referred to, at the time of the report, namely, May 17, 1900, was operated on the following streets:

From 23rd street, North river, to 23rd street and East river, with a branch from 23rd street (via 2nd Ave. to 34th St.) to 34th street and East river.

558 From 23rd street and 2nd Ave., on 2nd Ave., to 34th street belongs to the 2nd Ave. R. Co.

From 34th street and 2nd Ave. to 34th street and East river belongs to the N. Y. & H. R. Co.

The above includes the electric lines only, in addition the 23rd Street R. Co. leases and operates the lines of the Bleecker and Fulton Street Ferry Company.

The 23rd Street line was operated upon parts of routes belonging to four different companies, including the Twenty-third Street R. Co., and each of these companies owned one or more special franchises.

Q. Same inquiry as to the 4th Ave. line?

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The line above referred to, at the time of the report, namely, May 17, 1900, was operated on the following streets:

From Mott Ave. and 138th St. to post office, with branch from Bowery on Astor place to Broadway.

From Mott Ave. and 138th street to the easterly end of Madison Ave. bridge the track is owned by the Union R'y Company.

In addition to these, there are horse cars from 8th avenue and 86th street to Astoria ferry (92nd street and East river).

From 8th Ave. and 86th street through transverse road No. 3 of Central park, and through 85th street from 5th Ave. to Madison avenue, belongs to New York city.

From 86th street and 2nd Ave. to Astoria Ferry track belongs to 2nd Ave. R. Co.

The track on 33d street from 4th Ave. to Lexington Ave.
559 on 32nd street, from 4th Ave. to Lex. Ave. and on 34th street from Lex. Ave. to the East river.

The 4th Ave. line was operated upon parts of routes belonging to three different companies, including the Fourth Avenue Railroad Company, and each of these companies owned one or more special franchises.

The company, as above indicated, operates partly on a railroad, extending through Central park, which railroad belongs to the city.

Q. What property did the 4th Ave. line own at the time of this lease to the Metropolitan? What was taken over by the Metropolitan under the lease? Give detailed statement of real estate other than in the streets.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A. The following property not in streets was taken over by the Metropolitan Company under the lease:

Lease for a term of three years of depots, stables, car houses, repair shops and other buildings, situated on Fourth avenue, between Thirty-second and Thirty-third streets in the city of New York, extending 197 feet on Fourth avenue, 425 feet east on Thirty-second and Thirty-third streets, and 147 feet on Lexington avenue, also the depots, stables, car houses, repair shops and buildings on Madison avenue, between 85th and 86th streets, extending 204 feet on the westerly side of Madison avenue, and extend 220 feet on Eighty-fifth and Eighty-sixth streets.

Also, all rolling stock, including cars, horses, harness, tools and implements used in operation of railroad, together with equipment of depots and stables, contracts for the transfer of passengers
560 with other companies, and contracts for use of tracks of other companies and leases of other railroad companies.

The following property in streets was taken over:

Horse-car lines from easterly end of Madison Avenue bridge, across the bridge to Madison avenue, down Madison avenue to 42d street, double track. Single track on 44th street from Madison avenue to Vanderbilt Ave., on Vanderbilt Ave. to 42d street. Double track on 42d street from Madison Ave. to Park Ave., on Park Ave.

and 4th Ave. from 42d street to Astor place, on Astor place from the Bowery to Broadway, on the Bowery from Astor place to Broome street.

Single track on the Bowery from Broome to Grand street.

Single track on Broome street from Bowery to Centre street; on Centre street from Broome to Grand street; on Grand street from the Bowery to Centre street; double track on Centre street from Grand street to Park row; on Park row from Centre street to post office.

Single track on 32d street from 4th avenue to Lex. Ave.; on 34th street from Lexington Ave. to the East river; on 33d street from 4th Ave. to Lex. Ave.; on 86th street from 4th Ave. to 2d Ave.

Q. Did the Metropolitan, very shortly after the lease, take up the property in the streets and entirely replace it?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. A change of motive power on the large portion of the road had taken place by December, 1897. On a portion of the road no change has been made.

Q. What, if anything, was the value of the property in the streets acquired by the Metropolitan when it leased the Fourth Avenue?

561 Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. If this question refers to the tangible property and the value of the same, presupposing an immediate taking up of the tracks and change of motive power, the value of its tangible property was immaterial and of inconsiderable amount.

Q. When was the change made on the Fourth Avenue to an electric road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. In the fall of 1897.

Q. What roads, or parts of roads, belonging to the Metropolitan system are not included in the so-called lines mentioned on page 501? That is to say, what other lines, or parts of lines, does the Metropolitan lease, other than those included in the 6th Ave. line, 8th Ave. line, 4th Ave. line, 2d Ave. line, 23d Street line?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Broadway and 7th Ave., 9th Ave., Central Park, North and East River, Fulton Street Railroad Co., Bleecker Street and Fulton Ferry Railroad Co., and 42d Street and Grand Street Ferry Railroad Company and Third Avenue Railroad Company.

This answer is made on the assumption that the question refers to May 17, 1900.

Q. What was the par value of the stocks and bonds mentioned and described at page 510 of the evidence, and what was the actual market value in each case on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

562 A. The par value of these securities was $1,000 per bond in the case of bonds, and $100 per share in the case of stock.

Q. State, so far as you are able to do so, what each of these bonds and stocks cost the Metropolitan Company at the time purchased, with date of purchase.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The date of the purchase was 1897 and the prices were specified in Schedule L, attached to the return in this proceeding.

Q. At page 514, inquiry is made as to the surplus under Schedule G, page 8 of the report, amount of $737,065.83. Inquiry is made as to whether this surplus remained after payment of indebtedness for the year, or whether it arose from sale of bonds or excess of bonds paid, the answer is, "It was cash on hand at that time;" Please state whether this sum arose from earnings, or from bonded indebtedness? Is it not a surplus from earnings arising after payment of interest and dividend? And was not the income in excess of disbursements $737,065.83, as given at page 514, and not $167,380.86, as given at page 515?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. It is the cash balance on hand at that time against which the company had accounts payable, accrued interest and other debts to pay.

Q. Does the following include all the corporations owned or leased by the Metropolitan Street Railway Company on the second Monday of January, 1900:

Metropolitan Street Railway Co.
B'way and Seventh Ave.
563 Sixth Avenue.
Eighth Avenue.
Ninth Avenue.
Second Avenue.
Central Park, North & East R. R.
42nd Street & G. S. Ferry.
New York & Harlem.
23rd Street.
B. St. & Fulton Ferry.
34th St. C. T.
Central C. T.
28th & 29th Sts.
Fulton Street.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes; but the Metropolitan Company neither owned nor leased the Central Crosstown.

Q. What was the value of the capital stock of each corporation above mentioned and referred to whether by its official legal title, or by its general designation, on January 8th, 1900? Was it the aggregate value of the share stock in each case? In other words, was it the multiple of the number of shares and value of each share in each case? This question is directed to the value of the capital stock as a total as distinguished so far as any distinction exists from the value of the share stock so-called. This inquiry is intended to ascertain the actual value of the entire assets of the company, of every nature other than bonded indebtedness on the date named.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. All available information bearing upon the answer to this question has already been furnished. The question so far as
564 it is unanswered, requires a conclusion based upon testimony already given.

Q. Like inquiries as to the corporation constituting what is known as the Third Avenue system, consisting of viz:

Third Ave. R. R. Co.
42d St., Manhattanville & St. Nicholas Ave.
Dry Dock, East B'way & Battery R. R. Co.
Union R'y Co.
Westchester Electric R'y Co.
Southern Boulevard R. R. Co.
Tarrytown, White Plains & Mamaroneck R. R. Co.
Yonkers R. R. Co.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Same answer as to previous question.

Q. Were all of these roads operated at that time (2d Monday of January, 1900), in the 11 lines or divisions, so-called, given at pages 517 and 518? If not, please give gross earnings for so much of these lines or corporations as is not included in that statement.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. At page 521, it is stated that the sum of $3,406,976.45, open account in the Second Avenue, covers money spent for construction and equipment, and it is stated that that amount of money was "improving and bettering" the Second Avenue line under the terms of the lease. How much of that money had been expended on the 2d Monday of January, 1900, and how much of that sum should be

added to the value of the tangible property in the streets as
565 of that date; that is to say, how much should the value of the tangible be increased over that given as of June 30th, 1899, on account of the additional sums expended?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. All the money had been expended prior to June, 1900. No addition to be made to tangible property in the streets between January and June, 1900. The balance of the money was expended for car houses, equipment and power houses.

Q. Please explain what is meant by the answer, on page 536, lines 15 to 24, inclusive. At line 20, it is said, "No part of the one and one-half million is for property outside the special franchise; that is, for the cost of tangible property connected with the special franchise." This statement appears to be inconsistent and contradictory.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The $1,500,000 cost of reproduction, as per table K in the return in this proceeding, has nothing to do with the $1,500,000 which the Broadway & Seventh Avenue R. R. Co. obligated itself for as part of the entire cost of the building of its cable line.

Q. The point of the inquiry as to the betterments to the Broadway & Seventh Avenue road is, what sum should be added to the report of June 30th, 1899, for the value of real estate in the streets on January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. None.

Q. Referring to pages 539 and 540, where it appears that
566 the Central Crosstown pays rentals by way of percentage on gross receipts to the city, does it pay rental on its entire gross receipts under the terms of the franchise, or upon only a portion thereof? What is the amount paid by way of percentage and upon what sum?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Central Crosstown, on its own franchises, pays three per cent. of its gross receipts to the city. It also pays for account of the Christopher & Tenth Street three per cent. of gross receipts from lines operated under franchises of that company.

Q. In view of the statement of the expenditure of nearly $600,000 on special franchise by the Central Park, North & East River R. R. Co. during 1899 should not the value of the tangible be considerably increased over that given in the report?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The answer is unnecessary owing to the valuation of tangible property as heretofore stipulated between the parties for the purpose of this proceeding.

Q. Attention is called to page 542, line 20, as to whether the word "not" should stand or whether it is a clerical error, and should be stricken out.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This is not an error.

Q. At page 565 it is stated the Central Crosstown is not part of the Metropolitan system. Please state what relation it bears to the system.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

567 A. The Central Crosstown is not a part of the Metropolitan system. It has its own organization, and is operated as an independent property. The Metropolitan Company owns about two-thirds of the stock of the company. There is at the present time a system of voluntary transfers between the companies, which may be terminated by either party at any time.

Q. At pages 517 and 518 the gross earnings are given of eleven so-called lines. What were the net earnings of each of these lines, and what was the sum paid into the treasury of the Metropolitan Street railway from the operation of each of these lines after payment of expenses of the lines?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This question is not capable of being answered.

Q. At page 550 it is stated that money is earned to pay dividend on $1,500,000, not only from the operation of this company proper, but also from the operation of its cars on various other lines of the Metropolitan system. Please state the number of cars in such operation, also the number of cars of the other lines of the Metropolitan system in operation on the 28th & 29th Crosstown Company property. Also state whether or not this line or corporation does not carry passengers upon transfers given upon the other Metropolitan lines.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This company operates about twenty cars and exchanges transfers with other lines of the Metropolitan. It operates on tracks of the 23d Street Railway Company, and its terminal is on the property owned by the 23d Street Company.

568 Q. Is not the matter of transfers equalized by reason of the fact that 28th and 29th Street collects fares and gives transfers over the balance of the system, and that on the balance of the sys-

tem fares are collected and transfers given over the 28th and 29th Street Company's road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This company carried passengers on transfers a short distance in comparison with the distance which the companies extending lengthwise in the city carry the passengers of the 28th and 29th Street Company. In other words, it receives more than it contributes.

Q. What relation does the 34th Street Crosstown Company bear to the Metropolitan?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The Metropolitan Company owns all the stock of the 34th Street Company.

Q. How does the 34th Street road acquire the property right of running its cars over the other lines of the Metropolitan?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. By operating agreements.

Q. Does that company pay interest on its bonds, rental and surplus from moneys actually collected by it upon property owned and controlled by it, or is any part of this sum collected upon lines owned or leased by the Metropolitan, other than such as may be deemed to be collected on account of transfers.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

569 A. No; its revenue is principally obtained by its operation over the lines of other companies. The line owned by it only extends from Fourth avenue to Lexington.

Q. Does this sum represent any cash except such as is collected upon the 34th Street Company's road?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. Yes.

Q. At page 560 under answer to the question as to the gross receipts for the 42d and Grand Street Ferry lines, it is stated, "in Mr. Warren's affidavit above referred to" I find no reference to such affidavit in the evidence. Please explain what affidavit is intended.

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. The gross receipts of the company are given on pages 517 and 518 of the previous testimony. The affidavit of Mr. Warren referred to is that verified February 15, 1900, filed with the State tax board,

and is part of the printed papers in this proceeding. The figures are obtained in a tabulated statement annexed to such affidavit.

Q. Is the system of bookkeeping of the Metropolitan such that the books show, or that it can be ascertained from the books what are the gross earnings of each of the leased lines regarded as such?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. No.

Q. At page 566 it is said, "something over two million of
570 dollars was advanced the 42d Street and Dry Dock R. R. Companies, and it has been in part collected." Please state which amount was collected, and what application was made of these moneys?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This refers, in part, to interest collected on the debt due the Third Avenue Company for carrying the debt.

Q. What was the value of the stock and bonds of the White Plains, Tarrytown and Mamaroneck R. R. Company on the second Monday of January, 1900?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. As far as known, this stock has never been listed and quotation of it has never been made. Its value is nominal. It is conceded for the purpose of this proceeding that the bonds are worth par.

Q. What property did the Metropolitan take over from the Columbus and Ninth Avenue at the time it acquired that road in consideration of its assumption of three millions of dollars together with the bonded indebtedness? Did it obtain any property aside from the tracks and equipment of the road? What was the value of the equipment acquired? What was the value of property other than the tracks and tangible property in the street so acquired?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This was a case of consolidation, and the question is, therefore, incapable of being answered, except as to the valuation, and with respect to these, no value at this time can be stated or ascer-
571 tained. The consolidation took place on November 13, 1895, more than five years ago, and no value of the property was made at the time so far as is known.

Q. What property did the Metropolitan acquire from the Lexington Avenue & Pavonia Ferry Company? What was the value of the property so acquired outside the streets? What was the value of the property in the streets so acquired? What was the amount paid for the entire property acquired, including indebtedness assumed?

Objected to as incompetent, immaterial and irrelevant.
Objection overruled. Exception.

A. This was a case of consolidation, and the question is, therefore, incapable of being answered, except as to the valuations, and with respect to these, no value at this time can be stated or ascertained. The consolidation took place on May 18, 1894, more than seven years ago, and no value of the property was made at the time so far as is known.

Adjourned to Tuesday, November 26, 1901, 11 a. m., at the capitol, in the city of Albany, N. Y.

572 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY
vs.
THE STATE BOARD OF TAX COMMISSIONERS.

ALBANY, N. Y., TUESDAY, *November* 26, 1901.

The parties met pursuant to adjournment.
Adjourned to Friday, December 6, 1901, 11 a. m., at the capitol in the city of Albany, N. Y.
It is understood on that day a further adjournment is to be taken for final summing up to January 3 and 4, 1902. Briefs on the facts are to be exchanged, if possible, on or before December 20, 1901.

573 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE METROPOLITAN STREET RAILWAY COMPANY
vs.
THE STATE BOARD OF TAX COMMISSIONERS.

ALBANY, N. Y., FRIDAY, *December* 6, 1901.

FRANK J. BELL, sworn for the defendants in all cases, testified:

Examined by Mr. FIERO:

Q. Where do you reside?
A. Bloomfield, N. J.
Q. What is your business?
A. Deputy tax commissioner of the city of New York.
Q. What are your duties as such?
A. I am assigned as chief in charge of the deputies making the real estate assessments.

Q. How many deputies are there in the office of the commissioner of taxes of the city of New York, in the real estate bureau?

A. About 46.

Q. As to the nature and character of your duties, whether supervisory or otherwise?

A. My duties are supervisory.

Q. How far does that enable you to obtain knowledge with regard to the actual value as well as assessed value of real estate in the city? State a little in detail the character of your duties?

A. The assessed values are constantly before me; the re-
574 ports of the deputies making changes in assessed values are always made to me and from me to the commissioners, tabulated by me and presented to the commissioners in aggregate and in different forms for their consultation over them. I am constantly meeting taxpayers who are contesting and criticising our assessed valuations. Those are the particular forms in which the matters come before me.

Q. As to your actual knowledge of values, how far does that extend and how obtained?

A. I necessarily get some knowledge of the actual values of real estate from these observations.

Q. Have you made any personal examination in the office of the register of the city of New York with regard to sales of real estate as compared with assessed values within the past few days?

A. Yes, sir; I compared the list which I presented when I was last here.

Q. List of what?

A. List of sales in Manhattan. I have compared each record, each instrument, taking the grantor's and the grantee's name, the description of the property, the amount it sold for, the date of the instrument, and in some cases the reference to other instruments referring to the same transaction.

I have examined the list of sales of properties in the borough of Manhattan, covering two pages of cap paper, and find that, with two exceptions, they are on or near the line of Broadway, north of Forty-second street—the line of the rapid transit improvement—where transfers have been numerous, where speculation has been rife, and where considerations (I will not call them values) have been advancing with each transfer. Such considerations cannot be fairly used in comparison with assessed values, to arrive at percentages, and especially to fix a fair percentage for the whole city.
575 Such considerations, it is true, are the index of the feeling of speculators and may or may not later be sustained as real values.

Even where these properties are properly improved, the incomes do not warrant the values as indicated by the considerations expressed, the interest on mortgages, the taxes, and the fixed charges together bearing such a large ratio of percentage to the income that holders are in many cases wiped out by foreclosures.

The conservative policy used in fixing values for taxation, as pre-

scribed by law, viz: "the amount for which, under ordinary circumstances, they will sell," would not warrant following immediately in the wake of speculative transfers. It is only the settled and fixed values which are used as a basis for assessed valuations.

Of the two exceptions on the list, previously referred to, I will call attention, first, to the one at the southwest corner of Second avenue and 72d street, which is given as having been sold by Martin Metzger to Egan and Hallecy, at $49,000, and assessed at $14,000. The sale in this case was of land 59 feet wide, while the assessed valuation quoted was on only 30 feet. The grantees in the transfer are parties whose names appear in several of the transfers quoted on the list; they are speculative builders, frequently on building loan schemes, and it is in such transfers that fictitious amounts are so frequently used in their deeds, covering not alone the real value of the property, but a consideration for the loan as well. This is indicated by the record of sale in this case to those who are accustomed to "reading between the lines." The mortgage is given as $23,000, the consideration named "valuable consideration and $100."

The second exception is 202 Broadway, which is recorded
576 as having been sold at $300,000, and which is assessed at $270,000, indicating the relation of the assessed value to the consideration expressed of 91%, or nearly full value. In this section of the city values are well settled and definite, and the assessed valuations are so close to the amounts for which they will sell under ordinary circumstances that the whim of the purchaser, in his anxiety to secure a certain piece of property, or the embarrassment or caprice of an owner in his desire to sell, frequently results in transfers above or below the assessed valuation of the commissioners. There is probably no other city where these whims and embarrassments exist to the extent they do in New York. I quote in this connection the sale of No. 67 Wall street, which sold on September 25, 1899, at $180,000; it was assessed at $210,000. I also quote 210 Broadway, sold on May 15, 1901, at $195,000, and was assessed at $140,000. I will state definitely and particularly that all three of these properties are assessed in proportion to adjacent and similar property.

A further reason, tending to show low percentage, is that the assessed valuations are placed in the fall (commencing the first week of September) of the year previous to the one in which taxes are payable in October. During this time (more than twelve months) several transfers sometimes occur on the same piece of property, and when prices are booming, consequently the result is a lower percentage for the assessed valuations. All this, in connection with the fact, that as a rule it is only active properties that sell and are transferred, and with which a comparison may be made, and that the great mass of property is in a normal condition, and is not sought for by purchasers and is not transferred, tends to
577 show that the whole is more nearly assessed at its real value than would appear alone from the transfers of the compara-

tively few active pieces, representing only a small fraction of the entire city.

I attach a list of a few transfers, covering every section in Manhattan, which more nearly show the correct situation than the list of special pieces shown me covering only the one section of the city, and which is, beyond peradventure, the most speculative of any that could have been selected:

Manhattan.

Section 1.

	Assessed value.	Record of transfer.		Percentage.
22 Chatham Sq	11,000	Apl. 13	12,500	88
105 Division	7,000	Jun. 19	7,800	89
253 South	19,000	Sep. 11	18,000	105
67 Wall	210,000	Sep. 25-99	180,000	116
119 Baxter	16,000	Jul. 8-99	17,100	93
396-398 Canal	37,000	Jul. 14-99	41,250	89

Section 2.

528-530 6th St.	27,000	Jan. 6-99	31,000	87
14 E. 10th St	18,000	Feb. 27-99	19,240	93
153-55 Spring	85,000	Jun. 1-99	92,000	92
386-388 W. B'way	50,000	May 12-99	48,500	103

Section 3.

252 W. 15th St	7,000	Apr. 17-99	8,000	87
516-522 W. 35th St	38,000	May 1-99	41,000	92
3 & 5 W. 22nd St	80,000	Jun. 2-99	90,000	89
362 Third Ave.	37,000	Apr. 14-99	40,000	92
49-55 W. 27th St	365,000	Apr. 27-99	400,000	91

Section 4.

254 W. 88th St	13,000	Feb. 17-99	15,000	90
32 W. 69th St	10,000	Mar. 8-99	10,000	100
N. E. C. Riverside & 84th St	64,000	Mar. 8-99	60,500	105
367 W. 56th St	12,000	Apr. 13-99	12,250	100
N. W. C. Cen. Pk. W. & 91st St	140,000	May 17-99	150,000	93
118-122 W. 61st St.	57,000	Oct. 13-99	60,000	95
1680-1684 B'way	140,000	Nov. 20-99	150,000	93

Section 5.

	Assessed value.	Record of transfer.		Percentage.
446 E. 72d St	4,500	Jan. 9-99	4,600	98
168 E. 73rd St	11,000	Jan. 17-99	11,000	100
108 E. 54th St	21,000	Jan. 19-99	20,000	105
238 E. 45th St	10,000	Feb. 24-99	9,000	111
800 Lexington Ave	14,000	May 16-99	15,000	90
19 E. 56th St	46,000	Oct. 2-99	50,000	92

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Section 6.

26 W. 115th St	10,500	Nov. 18-99	12,000	87
117 E. 129th St	6,500	Jul. 15-99	7,750	83
417 E. 119th St	6,000	Apr. 29-99	7,500	80
2109 Second Ave	27,000	Sep. 9-99	30,750	87

Sections 7 and 8.

474 W. 144th St	10,000	Sep. 7-99	11,000	90
285 W. 147th St	12,000	Oct. 12-99	13,500	88
140 St. S. S. 100 E. 10	4,000	Mar. 9-99	5,000	80
N.S. 167th St. 77 3 W. of Amsterdam avenue	5,500	Feb. 2-99	6,000	91
20 Riverside drive	75,000	May 10-99	77,500	97
341 W. 125th St	13,500	Jun. 20-99	15,000	90
538 W. 134th St	18,000	Jun. 30-99	18,000	100
221 W. 135th St	7,500	Jun. 21-99	8,000	93
280-182 W. 125th St	36,000	Sep. 26-99	40,000	90
130 W. 131st St	10,000	Sep. 27-99	10,000	100
269 W. 97th St	9,000	Sep. 23-99	10,000	90
177-279 W. 127th St	30,000	Dec. 6-99	30,000	100
248 W. 124th St	15,500	Dec. 13-99	11,000	114

I have also read the evidence of Mr. Alexander Dumas, of the borough of Queens, and examined, at some length, the list of sales appended thereto.

There is probably no borough in the city in which exists so vast a difference in the judgment of value as in the borough of Queens. Much of the property was assessed, prior to the Greater New York charter, so far beyond its value that it was hard to realize the exact situation or to believe evidences of real value.

Mr. Dumas quotes 72 pieces which he claims are assessed at 67 per cent. of the record of the sales. Without going into the question of these sales I will simply quote 72 other sales taken from every ward in the borough, which are fully recorded and well authenticated, in which the assessed valuation bears to the selling price the percentage of 111 %, shown as follows:

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Ward 1.

Vol.	Block.	Lot.	Assessed value.	Amount sold for.	Date.
1	30	22	$25,000	$18,700	Apr. 4, 1900
2	79	29	1,000	1,000	Mar. 1, '99
3	29	26	1,900	1,500	Jan. 8, 1900
4	125	13	3,000	2,985	Apr. 16, 1900
	125	13	2,000	3,242	July 20, 1900
	122	2	1,200	1,150	Jan. 21, '99
	134	1	2,200	2,000	Aug. 5, '99
	138	19	1,200	1,175	Sep. 2, '99
5	155	64-66	3,200	3,075	Feb. 21, 1900
	171	33	600	650	Jan. 9, 1900
6	263	20	2,700	3,000	Oct. 22, '99
7	8	1	450	350	Feb. 15, '99
	24	54	200	180	Apr. 22, '99
	21	50	200	180	Apr. 22, '99
8	48	11	20,000	20,000	June 29, 1900
	53	38	700	450	Feb. 15, '99
	82	27	800	600	July 15, '99
	48	1	11,000	10,000	Oct. 11, '99
	45	2	1,700	1,825	Oct. 5, '99
9	125	10	1,800	1,500	July 18, 1900
	126	8	2,900	3,100	July 8, '99
10	126	8½	4,200	4,600	July 8, '99
	111	15	1,300	1,300	Aug. 5, '99
	171	39	350	300	Dec. 28, '98

Ward 2.

1	15	49	200	150	June 4, 1900
6	23	1	1,400	1,000	May 10, 1900
7	16	26	300	100	May 10, 1900
	16	26	300	100	May 10, 1900
8	72	9	125	125	May 7, 1900
	20	12-14	800	875	June 1, 1900
	29	22	200	150	June 15, 1900
	29	26	200	150	June 15, 1900
7	20	23	600	600	May 12, 1900
10	157	41	1,300	1,600	May 21, 1900
4	39	22	2,500	2,500	May 11, 1900
	38	53	5,000	4,000	May 18, 1900
10	171	11	150	150	May 22, 1900
7	113	18	1,100	1,000	June 3, 1900
	240	240	2,000	2,000	July 14, 1900
1	41	15	500	500	July 18, 1900
6	36	30	900	800	May 10, 1900

Ward 3.

3	16	1	5,000	5,000	Nov. 13, 1900
4	153	11	160	140	Apr. 3, 1901
3	40	27	6,000	5,000	Oct. 25, 1900
4	117	23	5,000	4,500	Apr. 23, 1901
4	132	51	2,000	2,220	Mar. 14, 1901
4	101	27-30	160	150	Apr. 11, 1901
3	12	36	4,500	4,750	Mar. 22, 1900
1	19	25	1,500	1,500	Mar. 14, 1901

580 Ward 4.

Vol.	Block.	Lot.	Assessed value.	Amount sold for.	Date.
1	2	150	1,800	2,000	1899
2	62	14	1,000	800	1900
	53	25	400	350	1900
		35	1,400	1,400	1900
	38	10	1,200	1,200	1900
3	16	764	300	300	1900
	3A	69	150	125	1900
4	12	12	3,000	2,840	1900
	12	302	2,000	1,800	1900
	13	281	1,000	1,100	1899
5	25	601	600	600	1900
	26	156	150	150	1900
	26	118	200	200	1899

Ward 5.

1	58	95	2,300	2,500	Oct. 9, 1900
1	44	60–61	5,000	5,000	Sep. 18, '99
1	13	20	2,000	2,000	Jan. 18, '99
	15	19	5,000	5,000	May 18, '99
	6	1	2,500	1,600	Apr. '99
1	26	59	9,500	5,000	Dec. 6, 1900
1	12	28	4,000	3,700	Jan. 28, 1901
1	62	76	2,200	1,500	Nov. 13, 1900
2	61	8	750	750	Apr. 5, 1901
1	51	65	2,600	1,000	Nov. 9, 1900
			$181,545	$162,887	

111 per cent.

Cross-examination by Mr. PAGE:

Q. In reference to your testimony to-day have you consulted with other officials in the tax department?

A. I have had several conversations with the president and one conversation with one of the commissioners.

Q. Has your conversation with the president been with reference to the testimony you were to give to-day?

A. No, sir, there was nothing said about that; we talked about the paper which I brought up on my last visit.

Q. That paper which you now refer to was a paper with the contents of which Mr. Feitner is familiar?

A. Yes, sir.

Q. That reflects his views as well as your own, does it not?

581 A. Yes; I may say it does, because he approved it; he said he thought that was the situation.

Q. Mr. Feitner has been for several years last past and still is the chairman of the tax department?

A. He is president of the board, and was 16 years ago, when I went there, a member of the board.

Q. He was a member of the tax board of the old city of New York, and at the present time is president of the tax department of the greater city of New York?

A. Yes, sir.

Q. Mr. Feitner occupied that position in 1899 and 1900, did he?

A. Yes, sir, both years.

Q. So that in coming here to-day you give the official views of the tax department upon this subject, do you not?

A. I may incidentally do so, but I don't think it was arranged I should do so.

Q. It was known you were coming up here to-day to testify in this proceeding?

A. Yes, sir.

Q. You came with the approval of the president of the tax board?

A. Entirely so.

Q. And the other members of the board as well?

A. Yes, sir, although I don't think there was any formal result or resolution about it; I know there was not; they all knew about it.

Q. They all knew of the fact that this proceeding was going on in which was up for examination the question of the ratio between assessed value and actual values in the city of New York?

A. Oh, yes, they knew that.

Q. Into how many tax sections for the purpose of assessment under the block system is the city divided at the present time, the borough of Manhattan?

A. We call them sections, but the tax districts are not similar.

Q. There is a division by sections?

A. Yes, sir, there is a division by sections.

582 Q. How many are there in Manhattan?

A. Eight in Manhattan; there are twelve tax districts.

Q. These sectional divisions which you have referred to are eight in number and cover the borough of Manhattan?

A. Yes, those are the block land map tax sections.

Q. Are these fairly equal, so far as the territory included in each section is concerned?

A. No, sir, very unequal.

Q. How does the first section compare with others?

A. The first section runs to Grand street nearly straight across from river to river.

Q. That is one of the most valuable of all sections?

A. Much the most valuable. The second section extends to 14th street straight across.

Q. That is another valuable section?

A. Yes, sir.

Q. How about the fourth section?

—. The fourth section is a very valuable section, called the West Side, extends from 59th street to 96th street west of Central park and Sixth avenue.

Q. These sections are fixed by law in the charter of the city?
A. Yes, sir, the land map law.
Q. About two years ago an article appeared in the Record and Guide, stating what the tax department methods were and how lands and buildings were valued for taxation; you remember that, I take it?
A. I think I do, yes.
Q. In this number of the Record and Guide to which I refer the article which relates to tax departments and method is based, is it not, as you recall it, upon an interview with yourself and another interview with Mr. Feitner?
A. Yes, sir.
Q. You read that article, didn't you, after it appeared?
A. Yes, I did.
Q. That correctly reported your statement, did it not, as made at that time?
A. That is my recollection of it, yes; I don't remember
583 distinctly now; an indefinite recollection I have that it did agree with my views.
Q. (Presenting same.) I suppose there is no question but what those are sheets from the Record and Guide?
A. Yes; that was just after the investigating committee had criticised our methods.
Q. The Mazet committee?
A. Yes, sir.
Q. This is the article in the "Record and Guide" to which we have previously referred?
A. Yes, sir.
Q. This article at this time was an article that was given out by yourself and Mr. Feitner after you had gone over the article?
A. I prepared the article.
Q. The entire article that appears there?
A. That is my recollection.
Q. Mr. Feitner saw that before it went out?
A. Oh, yes.
Q. The figures and statistics which are contained in that article were prepared by you in the same way as the figures which are given in your testimony on direct examination, weren't they?
A. Yes, sir.
Q. That is to say, you went to work and prepared your data in the same way in each case?
A. Yes, sir, except that I didn't go to the register's office on these; I took these from the "Record and Guide" and from the "Law Journal;" in that sheet I have gone over to the register's office and compared them.
Q. These figures which appeared in your direct examination, in the first instance, were prepared in the same way?
A. Yes, sir.
Q. You went over and verified them to the register's office?
A. Yes, sir.

Q. In your verification you found that the statements in the "Record and Guide" were correct; in other words, there
584 wasn't anything which required correction after your verification?

A. In the document presented here?

Q. Yes?

A. I found only two discrepancies.

Q. Those were slight?

A. Minor ones, and one correction was made in the register's office?

Q. You have no doubt about the correctness of the figures which appeared in that article?

A. None whatever.

Q. You have spoken about the Mazet investigating committee and the fact that this article appeared shortly afterward; there was an issue investigated by that committee among others as to the ratio between actual and assessed value in the city of New York?

A. That wasn't the point here.

Q. That issue was considered before the Mazet committee?

A. I don't think so; the issue was altogether on our percentage of increased valuation, the unevenness of it.

Q. You were present before the Mazet investigating committee, weren't you?

A. I was, part of the time.

Q. Mr. Feitner was there part of the time?

A. Yes, sir.

Q. You were there when Mr. Feitner testified, weren't you?

A. On one occasion I was; I think he testified on two or three occasions.

Q. Was it the first or last occasion when you were present?

A. That I can't remember; I remember of hearing him testify.

Q. In the course of this testimony—and I now read from volume 4 of a volume entitled, "Investigation of the Public Offices and Departments of the City of New York, 1899"—the minutes of the hearing which took place on the 10th of October, 1899; it is from the testimony of Mr. Thomas L. Feitner, page 4020—I should add
that this volume is officially entitled "The Report of the
585 Special Committee of the Assembly Appointed to Investigate the Public Offices and Departments of the City of New York, and of the Accounts therein Included, Transmitted to the Legislature January 15, 1900. Printed by James B. Lyon, State Printer." Before I ask this question I presume the counsel for the defendant will have no objection to my asking this *stipulation:* that this printed volume is a correct transcript of the minutes of those proceedings.

Mr. FIERO: If you ask the question we will raise the question.

Mr. COMAN: It is the official edition.

Mr. FIERO: We are not going to make an objection upon that ground. Ask your question and we will make the objection on the

ground the evidence is not competent or proper as to what Mr. Feitner said.

Mr. PAGE: You have no objection to it going on the record it is agreed this is the official edition and it is a correct transcript of the minutes?

Mr. FIERO: Say you read from the official edition and that will cover the whole ground.

Q. I read from the Official Report of the Special Committee of the Assembly Appointed to Investigate the Public Offices and Departments of the City of New York and of the Accounts therein Included. Transmitted to the Legislature January 15, 1900, no objection being made to the same as not being a correct transcript of the minutes of the proceedings of that committee. I read as follows, with the explanation above given to Mr. Bell:

"The witness (that is, Mr. Feitner): That is the very serious question in dispute. From our examination in our department, unofficially, we are satisfied that the rest of New York State is not assessed more than forty per cent. of the fair general value, while we
586 always maintained here that we ran from sixty to sixty-five or seventy per sent. and fairly maintained it: so that in place of being anything added to it there ought to be at least two or three hundreds millions of dollars taken off the valuation of New York city."

Do you recall Mr. Feitner gave testimony of that tenor?

Objected to as incompetent, irrelevant and immaterial.

The REFEREE: I don't see how it is competent, what Mr. Feitner swore to, or testified to, on that occasion.

Mr. PAGE: I am going to ask Mr. Bell if he was cognizant of this testimony having been given and the further question is of obvious propriety if he knew about it.

The REFEREE: You can question him about it: you may ask him what his view was at that time. I don't see how it is important to ring in here what Mr. Feitner testified to, or how it is competent.

Mr. PAGE: The point is, Mr. Feitner was before that committee with Mr. Bell, representing the New York tax department that was being investigated, and here was a statement made by the president of the tax board and Mr. Bell was present at the same time and knew of this testimony being given, and I want to go on from this point and ask him if he concurred in it or similar questions to that effect. I first want to know if he knew it was given.

The REFEREE: You can get at it directly by asking him what his view was at that time, in 1899, upon this very question.

Mr. PAGE: Your honor sustains the objection?

The REFEREE: Yes.

Plaintiff excepts.

587 The REFEREE: For the purpose of refreshing his memory you can call his attention to that but after all it is his evi-

dence as to the comparative value. He knows now what you are after. Just ask him the question.

Mr. PAGE: This is offered in connection with the witness' previous testimony and also as an official statement by the head of the tax department of the city of New York.

The REFEREE: I don't think in either aspect it is competent. You have got this witness here now, take his evidence and his judgment on that question.

Plaintiff excepts.

Q. Has your recollection been refreshed by hearing me read the statement from the report of the committee?

A. It has been refreshed as to the circumstances; I didn't hear that testimony.

Q. Did you afterwards hear of such testimony having been given.

Objected to as hearsay. Objection overruled. Exception.

A. Yes, sir.

Mr. FIERO: We now move to strike out the last answer, that he heard Mr. Feitner give this testimony, on the ground it is incompetent and improper.

The REFEREE: I will strike it out if there is nothing more to follow it.

Q. Did you ever have any conversation with Mr. Feitner and seek to correct testimony of that character?

Objected to. Objection sustained. Exception.

Q. Did you ever take any exception to Mr. Feitner's testimony as given before the Mazet committee on the ground that you disagreed with him?

Objected to. Objection sustained. Exception.

588 . Mr. FIERO: I take it that answer which we move to strike out goes out.

Mr. COMAN: We move to strike out all of the evidence with reference to the examination of Mr. Feitner before the Mazet committee.

The REFEREE: Let us see what his offer is.

Mr. PAGE: I now offer in evidence the concluding portions of the article from the "Record and Guide," a paper published in the city of New York, dated October 28, 1899, page 637, which article the witness has previously verified as an article which he prepared. I offer that part which is marked.

The REFEREE: That is all that is pertinent, is it?

Mr. PAGE: That is all that is pertinent.

Mr. FIERO: We don't think so.

The REFEREE: You can offer the balance.

Mr. FIERO: We object unless the whole paper is offered; a portion ought not to go in unless all is offered.

Mr. PAGE: We offer that part.

The REFEREE: You offer what portion you chose to.

Mr. FIERO: That we object to as immaterial, incompetent, not sufficiently proved and irrelevant.

The REFEREE: The witness testified they were his figures: the evidence is competent on cross-examination.

Defendant excepts.

The following is a copy of the portion offered:

Record and Guide, page 637.

The tax valuation of the Bennett building was increased from $600,000 to $750,000. This building occupies the whole front from Ann to Fulton streets, on the west side of Nassau.
589 It covers 10,200 sq. ft., and is 11 stories high. The land value, as fixed by the department, is $60 per sq. ft., which would be equal to $612,000; the building, 11 stories, contains 112,200 sq. ft. of floor surface and the factor employed is $4, $448,000; total value, $1,060,000; assessed, $750,000. There is no doubt about the value here, as there are a number of sales to show such values, and the factor per square foot of floor surface cannot be seriously at fault. What is noticeable in all these instances is that the assessed value bears about the same relative proportion to actual value as ascertained by the formula of the department, and so far as they go sustains its claim of equality of assessment. In the following list of properties, sold since the assessments were raised this year, the testimony on this point is not so unanimous, but it serves to show that the tax valuations placed upon downtown Broadway and 5th Avenue properties were not excessive as compared with those of parcels located in other thoroughfares and sections:

Location.	Assessed value.		Sold for.
	1898.	1899.	
432–436 West Broadway	$36,000	$45,000	$58,750
59–65 Liberty	350,000	475,000	580,000
555 Broadway	105,000	135,000	155,000
189 "	135,000	150,000	350,000
51 Nassau	25,000	50,000	60,000
3–5 West 18th	155,000	175,000	190,000
3–5 West 22d	50,000	80,000	90,000
1131–1133 Broadway	800,000	1,700,000	2,725,000
373–375 "	245,000	290,000	400,000
395–399 "	160,000	183,000	385,000
61–65 Walker	63,000	90,000	
S. W. cor. Broadway and Broome	325,000	400,000	850,000
26–28 Broad	240,000	340,000	500,000
110–116 Washington	75,000	100,000	123,000
14 Cortlandt	65,000	90,000	200,000
11 Park row	110,000	160,000	205,000
283–285 Pearl	80,000	95,000	140,000
18–20 Frankfort	45,000	50,000	75,000
34 Reade	42,000	55,000	75,000
133 West 15th	10,000	11,000	16,500
590 161 West 23rd	26,000	30,000	41,600
142 West 24th	8,000	9,500	13,500
114 West 26th	8,000	10,000	17,500
110 West 38th	16,000	22,000	32,000
43 West 19th	19,000	22,500	34,500
430–434 6th avenue	150,000	160,000	195,000
224 5th avenue	80,000	115,000	190,000
47 West 36th	18,000	21,000	36,000
42 West 40th	25,000	35,000	50,000
506–512 4th avenue	275,000	32 ,000	440,000
7 West 26th	75,000	87,000	170,000
2 West 27th	18,000	22,000	
323 5th avenue	100,000	150,000	220,000
360 3rd avenue	25,000	27,500	34,000
60 West 55th	18,500	20,000	27,250
20 East 46th	23,000	25,000	35,000
576 Madison avenue	31,000	36,000	50,000

The REFEREE: On your motion everything that was said by Mr. Feitner on that examination is stricken out.

Mr. HILL: That is the examination before the Mazet committee?

The REFEREE: Yes.

Plaintiff excepts.

Mr. FIERO: We offer the balance of the article.

The following is a copy of the portion offered by defendant's counsel:

Record and Guide, page 635.

Tax department methods.

How land and buildings are valued for taxation.

The system under which the values of their properties are assessed for purposes of taxation must form a matter of strong interest to property owners. Knowing this, when the charter required the tax department to "establish a just and equal relation between the valuation of property in each borough and through the entire city," the Record and Guide endeavored to obtain for its readers a
591 description of the working process by which this was to be brought about. The immense amount of work thrown on the tax department by the charter made it for a long time impossible for any of its officials to afford the time to supply the necessary information. Since then other causes of delay have crept in, among them the determination of the department not to make any statement that could be construed into an answer to criticisms of their work or in any way place them in a controversial position. Now, however, the Record and Guide is able to describe the process of valuing real property for tax purposes through the courtesy of the tax department.

What has to be determined is whether the department has a system based upon accurate knowledge of values, or whether the deputies make hap-hazard calculations, or are swayed by political and personal preferences. Whether, as some infer, New York realty runs the danger of being unfairly assessed as compared with its neighbor, or whether the assessments are really equitably and equally made. In the opening conversation with a Record and Guide representative President Feitner said: "You must get rid of the idea if you have it that the department recognizes any percentage of value which is to be taken as a maximum value for tax purposes. The 75 per cent. of value the public has in mind is purely fictitious. What we endeavor to arrive at is the fair market value of the property, what it could reasonably be expected to sell for readily if placed on the market, and the difference between the ultimate results of our calculations and the amount placed in the assessment rolls is brought about by the considerations necessary to maintain this position."

Mr. Frank J. Bell, chief deputy, having charge of the real estate, who was present, said further: "The system finally adopted by the department for ascertaining values was based upon its work and experience of a good many years, and that it produces
592 equable results can be demonstrated in most of the sales, as recorded, that have taken place in the past year. Errors will creep in occasionally, but these are rectified as soon as discovered. For instance, an unusual raise of value ($30,000 to $60,000) on a small property, No. 18 Mercer street, was made. This was a clerical

error, and on the application of the owner, made April 11, 1899, and acted upon by the commissioners May 26, was reduced to the original assessment, $30,000. The same may be said of the property at the northeast corner of Ann street and Theatre alley, raised from $36,000 to $90,000, and on the application of the owner, dated April 4, 1899, reduced to $70,000 on May 24, by the commissioners.

The system of arriving at valuations is: In regard to the land to employ the ordinary methods of the experts, taking size (page 636), adaptability to use, recorded sales of that and similar parcels into consideration; and, in regard to buildings to employ factors of value, of so much per square foot of floor surface that the experience of the department has shown to be fair. These for tenements run from for a common one $1.25 to $2 for a flat; for stores of a good class with iron front they will run to $2.50. When it comes to steel construction buildings the lowest factor of value is $3, and that only for a mercantile steel construction building; for modern office buildings this factor of value runs from $4 to $8 per sq. ft. of floor surface. Consequently, the deputy has besides the well-known means of determining the values of land, the factors of building values ranging from $1 for nominal values, to $8 per sq. ft. of floor surface. A builder would determine the cost of a building by a careful examination of the amount of material used in construction with the aid of plans and specifications. The cost of labor and a consideration of the difficulties to be overcome. An assessor cannot enter into such calculation, because he has not the plans and specifications, nor has he the time. The
593 cost may also be otherwise determined by an architect, who knows the height of the building in feet, by estimating its cubic contents, and using such a factor per cubic foot as his judgment tells him such a building will cost. The deputy cannot avail himself of this plan, because he cannot ascertain promptly the height of a building in feet. He can, however, easily count the stories—his map gives him the square feet of land, which he multiplies by the stories and this product by his factor for square foot of floor surface, thus arriving at the value. His selection of the proper factor is guided by an exterior and interior examination of the building, to ascertain materials used and style and kind of trim and finish.

Let us see how these rules work out on the block fronting on the west side of Broadway, between Dey and Fulton streets. This block contains the "Mail and Express" and "Western Union" buildings the former of which was increased from $500,000 to $650,000, while the latter was not increased at all. A sketch is submitted which is a copy of the tax map. For the purposes of comparison let us suppose that an inside lot on Broadway, at this point is worth $80 per square foot. The corners are worth 50 per cent. additional or $120, and the southwest corner, which faces an open place, is probably worth more, say $130, while property down the block, on either Fulton or Dey streets connected with Broadway, may be worth $50 per square foot. With these prices in view, let us figure out some of the values on this frontage. If the above prices are not the real

values in every one's judgment it will not matter in the process of equalization between the "Mail and Express" and the "Western Union" buildings, because they are alike affected.

(Diagram.)

594 No. 207 S. W. corner Broadway and Fulton street.

47 x 96.10; 1,662 sq. ft. x $130	$216,000
Building is 6 stories and old	25,000
Total value	$241,000
Assessed value raised from $160,000 to	180,750
Value as recorded in sale made in 1888	226,250

No. 203 Broadway, "Mail and Express" building.

2,475 sq. ft. on Broadway x $80	$198,000
4,422 " " on Fulton street x $50	221,100
6,897 " " land value	$419,100
10 stories, 68,970 sq. ft. floor surface x $7	482,790
Total value	$901,890
Assessed value raised from $500,000 to	650,000

No. 195 Broadway, Western Union building.

2,500 sq. ft., northwest corner Dey street x $120	$300,000
5,033 sq. ft. on Broadway x $80	402,640
8,100 " " on Dey street x $50	405,000
15,633 sq. ft. land value*	1,107,640
11 stories; 171,963 sq. ft. floor surface x $5.50	945,896
Total value	$2,053,436
Assessed value same as in 1898	1,500,000

Now, let us consider the block on the easterly side of Broadway, containing the "St. Paul," the Park bank and the Knox buildings, of which a copy of the tax map is also given. The deputy considered this side of Broadway much more valuable per sq. ft., fixing the Fulton Street corner at $175, the inside at $120, the Ann Street corner at $200 per sq. ft., and the rear property, connected as it is with Broadway parcels, at $50 per sq. ft.

(Diagram.)

* The land was purchased in separate parcels in 1872, 1880, and 1890, as per Record and Guide, for a total of $1,007,000.

595 St. Paul building.

2,500 sq. ft., southeast corner Ann street x $200	$500,000
3,200 sq. ft., Broadway x $120	384,000
5,700 " " land value	884,000
5,700 " " x 18 stories = 102,600 sq. ft.; 1,560 sq. ft. x 7 stories = 10,920 sq. ft.; total surface of 113,520 sq. ft. x $8 =	908,160
Total value	$1,792,160
Assessed value, 1898, $1,000,000, raised to $1,500,000, reduced to	1,300,000

* Northeast corner Broadway and Fulton, Knox building.

2,208 sq. ft. x $175	$386,460
(Diagram.)	
Building, old	20,000
Total value	$406,000
Assessed in 1898, at $175,000, raised in 1899 to	275,000

Broadway, Park bank.

5,933 sq. ft. on Broadway x $120	$711,960
2,360 " " rear on Ann street x $50	118,000
8,293 " " land value	829,960
Building: 5 stories; 41,465 sq. ft. floor surface x $4	165,860
Total value	$995,820
Assessed value, not raised in 1899	750,000

The block on the westerly side of Broadway, between Barclay street and Park place, is another typical case. The corners may be considered worth $120 per sq. ft., the inside $75 per sq. ft. The buildings are quite unimportant in value, varying perhaps from $1 to $2 per sq. ft. of floor surface. The map given herewith, like the two given above, is copied from the tax map.

* This property has a record of sale in 1893 to E. M. Knox (a part interest only) for $392,000. The deputy probably dropped below the mathematical figure, because the property is hemmed in by the Park Bank holdings and is not large enough for the erection of a modern high building.

596 (Page 637)—No. 229 Broadway.

2,500 sq. ft. on northwest corner of Barclay x $120	$300,000
2,100 sq. ft. on Broadway x $75	157,000
2,600 " " on Barclay x $50	130,000
7,250 " " land value	$580,000
Building, 6 stories; 43,200 sq. ft. floor surface x $1.25, say.	50,000
Total value	$637,000
Assessed value 1898, $425,000, raised 1899 to	475,000

No. 231 Broadway.

3,000 sq. ft. x $75	$225,000
Building, 6 stories; old	20,000
Total value	$245,000
Assessed value 1898, $130,000; raised 1899 to	180,000

No. 223 Broadway.

2,250 sq. ft. x $75	$168,750
Building, 5 stories; old	10,000
Total value	$178,750
Assessed value 1898, $80,000; raised 1899 to	125,000

No. 234 and 235 Broadway.

4,200 sq. ft. x $75	$315,000
Building, 7 stories	50,000
Total value	$365,000
Assessed value 1898, $202,000; raised in 1899 to	275,000

No. 237 Broadway, southwest cor. Park place.

3,150 sq. ft. x $120	$378,000
Building, 7 stories x $2	44,000
Total value	$422,000
Assessed value, not raised in 1899	325,000

597 Mr. PAGE: That is all we wanted to ask Mr. Bell.

Mr. COMAN: We now renew our motion to strike out all of the evidence relating to the examination of Mr. Feitner before the Mazet committee.

The REFEREE: I strike out the evidence given by Mr. Feitner before the legislative committee.

Mr. COMAN: Also the witness' answer that he afterwards heard Mr. Feitner had given such testimony?

The REFEREE: Yes.

Plaintiffs except.

Re-direct examination by Mr. COMAN:

Q. Is there any explanation that you desire to make concerning the figures and tables contained in this statement from the Record and Guide, if so, you may proceed to make it?

Objected to as too broad.

Q. What is the fact as to the figures in this statement purporting to give the true value of the various pieces of property referred to, from what were those derived and what do they represent actually?

Mr. HILL: What figures are you referring to?

Mr. COMAN: The figures which purport to give the true value of the pieces of real estate referred to in this article.

A. The first tables are tables of comparison, not necessarily of value, although they are based on values.

Q. You refer now to those at the foot of page 636?

A. Yes; this was a comparison.

Mr. HILL: Don't it show for itself what it is?

A. Yes, sir.

Mr. HILL: Then what is the object of any explanation?

598 Q. Proceed unless the referee tells you not to.

The REFEREE: It is not necessary for him to testify to anything that appears there.

Mr. COMAN: He isn't doing any such thing.

The REFEREE: If those figures are not true, that is what we want to get at, say so.

The WITNESS: I say these figures of valuations are not mine.

Q. Whose are they; from what source did you procure them?

A. From recorded sales; I give no estimate of value, I only give a comparison of value in the statement here.

By the REFEREE:

Q. Those are the figures obtained from the recorded sales, the same as the figures you have produced here to-day?

A. Yes, except those are verified, and these are not.

Q. We assume they are a correct transcript from the recorded sales. The figures you produce here to-day are correct transcripts from the recorded sales?

A. Yes, sir.

The REFEREE: You have the same standard, then, in both cases. Now, is there anything the matter with those figures that you want to explain. Put any question that you desire.

Mr. COMAN: I will adopt your honor's question.

The WITNESS: I see nothing I want to explain about that.

Mr. COMAN: Simply the figures do not represent your estimate of values, but the recorded sales the same as the statement that you have produced to-day.

The REFEREE: That is true; the same standard in both cases.

Mr. COMAN: In the statement submitted to-day, are you
599 familiar with the values of the property referred to in this statement, as distinguished from the sales price.

The REFEREE: In order to make the answer of any value, did you examine into the various parcels of real estate to see what the real value was, aside from the sales price?

A. To some extent.

Mr. COMAN: As to what particular pieces of property and what examination did you make; what investigation did you make—I don't think I will go into that now, I withdraw that question.

The WITNESS: In the paragraph preceding the figures given on page 637 is a reference to value, supposing a value per square foot; it is not given as an actual value. Those figures recur in the statement below.

By Mr. PAGE:

Q. Those are the values, are they not, which are in that part of the article which has been offered in evidence by the attorney-general?

A. I don't know whether I understand which has been.

Q. The figures offered in evidence on behalf of the plaintiffs occur at the end of your article; is your present comment designed to refer to that part?

A. My attention was drawn to the figures on the preceding page to that.

Q. Which were offered in evidence by the attorney-general?

A. Yes, sir.

Mr. COMAN: You started to say something about the last figures.

Mr. BROWN: He don't want to explain what he put in himself.

The WITNESS: The figures in the paragraph, the prices per square foot for land given in the last paragraph, on page 636, are not
600 intended as real values, they are only given as figures for the purpose of comparison, illustration. The article says: "For the purposes of comparison, let us suppose that an inside lot at this point is worth $80 per square foot." I wanted to say that is not necessarily my judgment of the value of the land there just as the article intimates.

By Mr. BROWN:

Q. It might be worth more?

A. Yes, or less.

By Mr. PAGE:

Q. The part of the article offered in evidence by the plaintiffs appears on page 657, does it not?

A. Yes.

Q. You make no assessment personally, do you. They are all made subject to the approval of the board?

A. No, I make no assessments personally.

By Mr. COMAN:

Q. Nobody makes any assessment personally, the assessments are made by the board as a board?
A. No, sir, the deputies make the assessment.
Q. The deputies fix the valuations?
A. Yes, sir.
Q. The assessment is the action of the board, is it not?
A. The assessed values are placed by the deputies, the actual tax is fixed by the board of aldermen and municipal assembly.

By Mr. BROWN:

Q. The deputies actually swear to the assessments?
A. Yes, sir.

By Mr. PAGE:

Q. The deputies personally view the property, do they not?
A. Yes, sir.

By Mr. BROWN:

Q. A statute requires them to make an oath that they have assessed it.
A. Yes, sir.

Defendants rest.

601 FREDERICK G. HOBBS, recalled by plaintiffs in all the cases:

Examined by Mr. PAGE:

Q. You have read Mr. Bell's direct examination in this proceeding, have you not?
A. Yes, sir.
Q. You have, during the last two weeks, made a study of the statements which are contained in a document which has been referred to by Mr. Bell in his testimony as the list, being the statements which were prepared by Mr. Bell prior to coming on the stand as a statement of his views on this branch of the case?
A. Yes, sir.
Q. Have you, as a result of your investigation and the result of personal examination of transfers of property, prepared a statement containing statistics and stating various circumstances which controvert to a certain extent the statements made on Mr. Bell's direct examination?
A. I have.
Q. Will you please read the statements?
The witness reads the statement:
The seventy-three transfers of property cited by me in my testimony which Mr. Bell criticised were actual sales, requiring more or less negotiation to make the minds of the buyer and seller agree, and that the prices or values quoted were the real values at that time. These seventy-three illustrations were not selected as a special list.

I find in Mr. Bell's testimony a total of forty-five illustrations of transfers of property; twenty-seven of these forty-five were sales at auction, twenty-one of the twenty-seven auction sales were sold under foreclosure, fifteen of the twenty-one sales bid in by the plaintiff; of the twenty-seven auction sales, four were executors' sales, and two of the properties, viz., 153 and 155 Spring street, and 1680–1684 Broadway, were bought in by heirs of the estate, evidencing that
602 the outside bidders were not willing to pay the value of the property; and still Mr. Bell uses these figures as a basis in arriving at percentages on these two properties of 92 and 93 per cent. And two illustrations have street numbers which do not exist, viz., 234 West 88th and 180 and 182 West 125th. The assessed value of four of the properties sold at auction was reduced in 1900 by the tax commissioners, *i. e.*, 49–55 West 27th street was reduced from $865,000 to $325,000, or 80.125 per cent. of the price, $400,000, which it was sold for at public auction under foreclosure. On December 26, 1900, this same property was sold at private contract by the buyer at auction to Frank N. Gill. The revenue stamps on deed were $700—indicating that the property was sold for a consideration of $700,000. Assuming this as a basis of value, the percentage of assessed value to real value is 46.43 per cent. On September 18, 1900, he gave a mortgage on the property to the City Real Estate Company of $400,000, at 4½ per cent.; the subsequent sale and mortgage to the sale of foreclosure indicate clearly that the price bid at auction was not a fair value for the property.

The assessed value of 238 E. 45th street was reduced in 1900 from $10,000 to $9,000, or 100 per cent. of the price which it sold for at public auction under foreclosure. Mar. 2, 1897, a mortgage was made on it for $11,000 at 5 per cent. Mar. 6, 1897, it was sold, subject to mortgage of $11,000, for an expressed consideration of $18,250, which makes the assessed value of 1900 50 per cent. of the selling price. Aug. 14, 1897, it was sold, and expressed consideration was $18,000, which also makes assessed value of 1900 50 per cent. of the selling price. Mar. 4, 1898, a mortgage was made for $12,500 at 5 per cent. June 18, 1898, was sold subject to a mortgage of
603 $12,500, and the expressed consideration was $17,500, which also makes the assessed value of 1900 about 50 per cent. of the selling price. Feb. 4, 1899, was sold at foreclosure, amount due being $14,409.40, and was bid in by the plaintiff for $9,000—which, in view of the previous history of the property, would not indicate that it sold for anything like its real value, and therefore that the percentage of assessed value to price in record of transfer of Feb. 4, 1899, is not a fair conclusion.

I find an error in Mr. Bell's testimony as to the assessed value of 230 W. 131st street. He represents it as $10,000, and I find it to be $5,500, which is 55 per cent. of the price which it sold for Sept. 27, 1899.

No. 22 Chatham square, referred to by Mr. Bell as being assessed in 1889 for $11,000 and selling Apr. 13, 1899, for $12,500, or 88 per cent., I will add further, it sold Aug. 30, 1899; the revenue stamps on

deed were $18, indicating consideration as $18,000, or 61.11 per cent. Aug. 30, 1899, premises were mortgaged for $12,000 at 4½ per cent., 5 years.

No. 67 Wall street, referred to by Mr. Bell, assessed at $210,000 in 1899 and sold for $180,000 Sept. 25, 1899.

Nos. 386 and 388 West Broadway, referred to by Mr. Bell, assessed at $50,000 in 1899 and sold for $48,500 May 12, 1899.

No. 320 Riverside drive, referred to by Mr. Bell as assessed in 1899 for $75,000 and sold May 10, 1899, for $77,500, I find the sale of May 10, 1899, and the consideration in the deed was $77,500; the amount expressed in the deed of May 10, 1899, is only about the value of the land, and in addition thereto is a very handsome dwelling on the land.

No. 5 W. 22d street, referred to by Mr. Bell, assessed at
604 $80,000, record of transfer June 2, 1899, consideration $90,000, I find on June 2, 1899, a deed of Mar. 23, 1883, was re-recorded, and the consideration in deed of June 2, 1899, must have been the same as the deed of Mar. 23, 1883, or the value of that date. A conservative estimate of the value of 5 W. 22d street (being 54 feet by 98.9) would be $160,000, which would make the assessed value of $80,000 of 1899, 50 per cent. of the actual value. To substantiate my value on No. 5 W. 22d street I quote the sale of No. 13 W. 22d street, dated Dec. 28, 1899, 27 x 98.9, four-story stone front dwelling, $82,500; and No. 15 W. 22d street, dated June 19, 1900, 26.2 x 98.9, four-story stone front dwelling, price $110,000. These figures are equivalent to about $3,000 per front foot, which is the rate of valuation given to 5 W. 22d street at $160,000.

N. E. corner of Riverside drive & 84th St., referred to by Mr. Bell, assessed $64,000, 1899, sold for $60,500 Mar. 8, 1899. I find the following to be the case: The northeast corner of 84th street and Riverside drive (57.4 x 102 x 52.2 x 79) was sold Mar. 8, 1899, by Patrick Callaghan to William R. and James R. Stewart for $60,500. This plot is assessed for $28,000 and not $64,000, as represented by Mr. Bell. By way of explanation, however, would say that the entire property, comprising a little over five lots, was assessed for $64,000; therefore the relation of the correct assessment of $28,000 to the selling price of $60,500 is 46½ per cent. and not 105 per cent., as represented by Mr. Bell.

Mr. Bell refers to the northwest corner of Central park west and 91st street, assessed value $140,000, 1899, sold May 17, 1899, for $150,000. I find the northeast corner of 91st street and Central park west (100.8 x 120) was sold by Julius Oppenheimer to Isabelle Loring
605 on May 17, 1899, for $150,000. I also find by an examination of the books in the tax department that the entire block front on Central park west from 91st to 92d street, being practically twice the size of the plot referred to by Mr. Bell, was assessed in 1899 for $140,000; therefore, by dividing the assessment and putting one-half of it on each one-half of the block, it would reduce the assessed value $70,000, which is 46⅔ per cent. of the selling price of

the northwest corner of Central park west and 91st St., May 17, 1899.

No. 19 E. 56th St., referred to by Mr. Bell as assessed $46,000 in 1899, conveyed Oct. 2, 1899, consideration $50,000. I find this property conveyed to Jesse F. Carpenter, May 9, 1896, consideration $65,000, which makes the assessed value of 1899 about 71 per cent. of the consideration expressed in deed of May 9, 1896; the transfer of Oct. 2, 1899, was from Jesse F. Carpenter to Elizabeth Ten Eyck Carpenter; this property is now worth about $100,000. On this basis the assessed value of 1899 is about 46 per cent. of the present value.

No. 14 E. 10th St., referred to by Mr. Bell, assessed 1899 for $18,000, record of conveyance Feb. 27, 1899, $19,240; this conveyance was made by Howard H. Henry *et al.*, executors, etc., of Frank L. Henry to Julia H. and Ambrose D. Henry, $19,240. On Dec. 27, 1899, the owners of record of that date gave a mortgage on this property to the Equitable Life Assurance Society of $20,000 at 4½ per cent. On Apr. 12, 1899, No. 22 E. 10th St., a 3-story house (on same size plot as No. 14 E. 10th St., 25 x 92.3) was conveyed and the consideration expressed was $30,000; therefore, on a basis of the mortgage placed on the property by the Equitable Life and the conveyance of No. 22 E. 10th St., Apr. 12, 1899, it is my
606 opinion that the value of No. 14 E. 10th St. at the time of transfer was $30,000, which would make the assessed value as 60 per cent. of the real value.

No. 232 West 15th street, referred to by Mr. Bell as assessed 1899, $7,000, record of transfer April 17, 1899, $8,000, I find this property conveyed by Daniel H. Smith to Pierson W. Smith, February 2, 1901; No. 224 West 15th street, a similar house was conveyed at an expressed consideration of $15,000, February 2, 1901. No. 214 West 15th street, a similar house was offered for sale at auction and bid in by the parties in interest at $15,450. It is my opinion that the real value of 232 West 15th street in 1899 was $14,000, which makes the assessed value 50 per cent. of the value of the property.

North side 167th street, 77.3 west of Audubon avenue (and not west of Amsterdam avenue, as there is no such conveyance), assessed 1899 for $5,500, record of transfer February 2, 1899, $60,000, I find the above a record of conveyance, and, further find a mortgage of $5,000 at 5 per cent. recorded, given by the buyer at foreclosure, February 2, 1899, to Frederick P. Sands, trustee under deed of trust by Frederick Parker Sands. I am familiar with the property, and believe the lot to be worth $1,500, and the house on the lot to be worth $5,000, aggregating a total value of $9,500, which is 60 per cent. assessed value to the real value; my valuation is substantiated by the amount of loan B. & M. made to said Sands subsequent to the sale at foreclosure.

No. 119 Baxter street, 25 x 100, a six-story brick store and tenement, with five-story brick tenement in rear, referred to by Mr. Bell, assessed 1899, $16,000; consideration expressed in deed July 8,

1899, $17,100. I also find a mortgage given on said property
607 by the purchaser, of July 8, 1899, of $15,000 at 3½ per cent. for five years. It is therefore conclusive that the expressed consideration of $17,100 was for the equity above mortgage of $15,000, making a total value of the premises $32,100, or 50 per cent. assessed value to the real value. To further substantiate this valuation I quote sale of December 22, 1899, 93 Baxter street, 25 x 101, two-story frame store and tenement, three-story brick tenement in rear, at an indicated price of $22,500, revenue stamps $22.50.

Nos. 277 and 279 West 127th street, referred to by Mr. Bell, assessed value 1899, $30,000, record of transfer December 6, 1899, $30,000; I find that the record referred to by Mr. Bell was not a deed, but the record of a contract of sale which was released of record January 8, 1900, and that the property was conveyed December 9, 1899, at an indicated consideration of $40,000, or 75 per cent. of the assessed value to real value, and was again conveyed June 25, 1900, at an indicated consideration of $45,500, or 66⅔ per cent. assessed value as to real value.

140th street, south side, 100 feet east of Amsterdam avenue, referred to by Mr. Bell, assessed 1899, $40,000, record of transfer March 9, 1899, $5,000, May 24, 1899. This lot was mortgaged by the owner to American Manufacturing Company for $5,000; June 2, 1899, was further mortgaged for $1,000; June 15, 1899, lot was sold to Walter D. Starr, subject to mortgages for $6,000. This lot, in my opinion, was reasonably worth $7,500 in 1899, which makes the assessed value 60 per cent. of the real value.

No. 800 Lexington avenue, referred to by Mr. Bell, assessed 1899 for $14,000, record of transfer May 16, '99, $15,000. I find record of transfer of the property Apr. 27, '98, consideration expressed
608 $30,000, or 49 per cent. assessed value 1899 to real value 1898; Apr. 27, 1898, mortgage was placed on this property of $16,000 at 5 per cent. to Joseph Louchheim; May 16, '99, under foreclosure, premises sold to plaintiff, said Louchheim, for $15,000, and there was then due on the B. & M. $17,356.55. May 16, '99, property conveyed subject to mortgage of $16,000 at 4½ per cent. for five years, made to said Louchheim. It is my opinion that the foreclosure sale of May 16, 1899, quoted by Mr. Bell, was not the real value, as is evidenced by the mortgage made on said premises of $16,000 at 4½ per cent., and the immediate resale.

No. 446 E. 72d St., referred to by Mr. Bell, assessed 1899 $4,500, record of transfer Jan. 9, 1899, $4,600, I find May 29, 1899, said property was bought from the purchaser at foreclosure sale of Jan. 9, 1899, at an expressed consideration of $2,500 above a mortgage of $3,500, or an indicated valuation of $6,000, which is 75 per cent. assessed value as to real value, and on Jan. 12, 1900, owner of record placed a new mortgage on said premises of $5,000 at 5 per cent.

No. 32 W. 66th St., size 25 x 100.5, with 5-story brick flat, referred to by Mr. Bell, assessed 1899 for $10,000, record of transfer foreclosure Mar. 8, '99, $10,000 to the plaintiff. In my opinion the lot without any improvement in 1899 was worth $15,000, or 66⅔ per cent. of assessed value to real value.

No. 285 W. 147th St., referred to by Mr. Bell, assessed $12,000, record of transfer Oct. 12, '99, $13,500; I find that the buyer of the premises at foreclosure sale gave a mortgage Oct. 12, 1899, to U. S. Trust Co. of $11,000 at 4½ per cent. In my opinion the loan of $11,000 was 60 per cent. of the real value of the property.

Nos. 516 to 522 W. 35th St., referred to by Mr. Bell, assessed
609 in 1899, $38,000, recorded transfer May 1, 1899, $41,000; I find a record of transfer Dec. 20, '98, consideration expressed, $50,910, which is 76 per cent. assessed value 1899 to expressed consideration Dec. 20, '98; also record of transfer Jan. 1900, consideration expressed, $47,842, which is about 80 per cent. assessed value 1899 as to expressed consideration Jan. 9, 1900.

I hereby summarize as far as examined the transfers submitted by Mr. Bell, with percentage arrived at by him, showing him to be in error as follows:

Property.	Bell's %.	Correct %.
5. 49–55 W. 27	91%	46.43%
6. 238 E. 45	111%	50.00%
7. 367 W. 56	100%	89.00%
8. 2109 2d Av	87%	81.00%
9. 230 W. 131	100%	55.00%
10. 22 Chatham Sq	88%	61.11%
11. 67 Wall St	116%	77.00%
12. 386 & 388 W. B'way	103%	83.33%
13. 320 Riverside	97%	51.90%
14. 5 W. 22	89%	50.00%
15. Riv. & 84	105%	46½ %
16. C. P. W. & 91	93%	46⅔ %
17. 19 E. 56	92%	46.00%
18. 14 E. 10	93%	60.00%
19. 232 W. 15	87%	50.00%
20. N. S. 167 St	91%	60.00%
21. 119 Baxter	93%	50.00%
22. 277 & 279 W. 127	100%	66⅔ %
23. 140 St. near Ams	80%	60.00%
24. 800 Lexington Av	90%	49.00%
25. 446 E. 72	98%	75.00%
26. 32 W. 66	100%	66⅔ %
27. 285 W. 147	88%	60.00%
28. 516 to 522 W. 35	92%	76.00%

1. 153 & 155 Spring, exr. sale bid in by heir.
2. 1680, 1684 B'way " " " " " "
4. 180–182 W. 125 No such number
3. 234 W. 88 " " "
No card. 210 B'way. " " conveyance.

610 Referring to the corner of Second avenue and 72d street, referred to in my former testimony, having been sold for $49,000, and being assessed for $14,000 assessed value to actual value, 28,571 per cent. To correct that, the size of the property 50 x 102.2 is 59 x 102.2, making a difference of 9 feet in the assessed value; therefore if 50 feet was assessed at $14,000, 59 feet should be assessed $16,520, which would increase the percentage of assessed value to 33.71 per cent. and not 28.571 per cent. as quoted before.

THOMAS C. SMITH, sworn for the plaintiffs in all cases:

Examined by Mr. PAGE:

Q. Where do you reside?

A. 57 East 76th street, borough of Manhattan; my place of business is 111 Broadway.

Q. Will you state your experience in the real estate business and qualifications to testify as an expert as to the value of real estate in the city of New York?

A. I wish to state my business: I am a real estate broker, appraiser and auctioneer; have been engaged in that business for nearly sixteen years; my place of business has always been 111 Broadway; I have appraised and testified for the city in many condemnation proceedings, that is, to acquire land and buildings under the condemnation proceedings for park, street openings, school sites. I have also appraised for individuals, estates, lawyers. I have bought and sold property on Manhattan island from Stone street to 209th street, and have also appraised all over the borough of Manhattan. I have a system of block books showing the date of the last conveyance, the consideration as mentioned in the deed and the name of the grantee of every parcel of land on Manhattan
611 island that has been conveyed subsequent to March 22, 1868. I also have a card system——

The REFEREE: I guess we will assume you are qualified.

By Mr. HILL:

Q. 111 Broadway is the headquarters of the Real Estate exchange?

A. Yes, sir, the Real Estate sales room.

Q. All take place there?

A. Yes, sir.

By Mr. PAGE:

Q. Have you prepared a schedule of parcels of property which have been recently the subject of sales in the various eight sections into which the island of Manhattan is divided?

A. I have.

Q. The dates when these transfers of property took place were a short time before, or a short time after the second Monday of January, 1900, were they not?

A. Yes, sir.

Q. In these eight schedules which you have prepared appear columns headed "Assessed valuation," "Date," "Record of transfer" and the percentage which the assessed valuation constitutes of the consideration which has been found by you to be expressed in the record of transfer?

A. Yes, sir.

Q. Will you state in what way you prepared these statistics which are contained in these tabulated statements referring severally to the eight sections?

A. I have a card system arranged according to the section and block numbers of Manhattan island and I have in the limited time run through these cards, looked them over and jotted down the conveyance, the date and the consideration mentioned in the deed. Afterwards I have gone to the tax office and obtained the tax valuation of 1900 and then figured out the percentage that the tax
612 valuation bears to the selling price. Then I have added up the totals and have shown the average percentage that the tax valuation bears to the selling price.

Q. The assessed valuation?

A. Assessed valuation. We always speak of it as the tax valuation bears to the selling price in sections 1, 2 and 4. The others I did not have sufficient time to look over the tax books and get the tax valuation.

Q. In preparing these tabulations have you considered at all the assessed valuation before making up your list?

A. Oh, no, I didn't know about the assessed valuation until afterwards.

Q. That is to say, you have made up your list of specific parcels of property without any reference whatsoever to the assessed valuation of the same?

A. Absolutely irrespective of the assessed valuation, in the first instance.

By Mr. BROWN:

Q. Then you have gone to the tax books and found the assessed valuations of the property you had selected in that way?

A. I have.

By Mr. PAGE:

Q. I show you the schedules to which you have referred and ask if these are the papers which have been prepared by you on the basis stated and whether the statements contained in the same are correct?

A. Yes, sir; those are the papers and the statements are correct.

By Mr. FIERO:

Q. You say you compared the assessment of 1900; what assessment do you mean, the assessment became fixed at what time?

A. The tax valuation of the year 1900, or the assessed valuation of 1900, decided upon in January, 1900.

613 By Mr. PLATT:

Q. Assessed as of the second Monday of January, 1900?
A. Yes, sir.

Mr. PAGE: We offer in evidence eight tabulated statements prepared by Mr. Smith showing with respect to the eight sections into which the island of Manhattan is divided a comparison between assessed value and selling value in the cases stated.

Defendant's counsel objected as immaterial, incompetent and not properly proven, and objected specifically to the sales and comparisons appearing where the transfer was later than the second Monday of January, 1900, that being the date of the assessment. And upon the ground that a very large proportion appears to be of a later date, so far as the record of transfer is concerned.

Objection overruled. Exception.

Q. Will you state whether in your opinion the sales which are referred to in these various tabulations are fair standards of the relation between actual and selling value in the various sections of the city?
A. I consider that they are typical examples; yes, sir.

Cross-examination by Mr. COMAN:

Q. In preparing this schedule did you take all of the sales in the various districts between certain dates?
A. No, not all of the sales.
Q. Why not?
A. Because I didn't have the time.
Q. In making your selections what course did you pursue?
A. In making my selections I pursued this course, to take something on Broadway, for instance, in section one, the Trinity building, 111 Broadway, Liberty street, Front street, Hester street,
614 Cherry street, Greenwich street, so as to show that the same proportion or ratio would exist in different districts and different streets.
Q. You took what you regarded as representative transactions?
A. Yes, sir.

Re-direct examination by Mr. BROWN:

Q. When you took those properties that you have mentioned you had no knowledge what the assessment was?
A. None whatever.

By Mr. PAGE:

Q. In any case?
A. No, sir.

The following is a copy of the tabulated statements:

Section 1.

	Assessed value.	Record of transfer.		Per-centage.
37 Front St	6,000	Jul- 12-00	12,700	47
28½ & 30 Front St	18,000	Jan. 30-99	26,000	69
114 & 116 Liberty St. & 119 & 121 Cedar St	72,000	Feb. 15-00	275,000	26
109 & 111 Broad St. & 24 Front St	18,000	Jan. 19-00	80,000	22
10 Broadway	140,000	Aug. 1-00	250,000	56
111 Broadway	850,000	May 26-99 (1-3)	475,000 1,425,000	59 Whole.
139 Broadway	150,000	May 31-00	333,000	45
155 & 157 Broadway	300,000	May 1-00	500,000	60
255 Pearl St.	24,000	Oct. 28-99	60,000	40
191 William St.	18,000	May 29-00	32,000	56
215 & 219 William St. & 12 to 16 N. William	28,500	Mar. 27-00	37,500	76
23 Park place & 20 Murray St.	130,000	Jul- 24-99	170,000	77
89 & 91 Warren St.	21,000	Ap'l 2-00	35,000	60
156 Reade St	12,500	Jan. 4-00	18,000	69
147 W. Broadway	25,000	Nov. 17-99	36,000	70
487 Pearl St. & 38 City Hall place	15,000	Dec. 26-00	21,000	71
5 & 7 Franklin St.	22,500	May 10-00	46,500	48
353 to 357 Broadway	390,000	Mar. 1-00	413,000	94
339 Greenwich St.	18,000	Jul- 18-99	27,000	67
46 Harrison St.	11,500	Ap'l 19-00	15,000	77
68 James St.	12,000	Mar. 1-99	23,250	52
130 Madison St.	12,000	Feb. 1-99	23,000	52
25 East Broadway	7,000	May 14-00	19,175	36
6 Rutgers St.	16,000	Feb. 1-99	32,500	49
162 East Broadway	11,000	Jan. 16-00	25,000	44
59 & 61 Elizabeth St	14,500	Jan. 18-00	23,000	63
137 Hudson St.	12,000	Dec. 11-99	16,500	73
446 Washington St.	4,500	Oct. 21-99	11,000	41
439 Canal St.	6,000	Nov. 29-99	13,500	45
161 Hester St.	14,500	Nov. 13-99	30,000	48
156 Cherry St.	7,000	Mar. 28-00	10,450	67
				1759

Average, 56 13-31 per cent.

615

Section 2.

	Assessed value.	Record of transfer.		Per-centage.
36 Goerck St.	7,000	Aug. 29-99	13,500	51
65 Broome St.	20,500	Ap'l 19-00	33,500	60
131 Cannon St.	9,000	Mar. 1-00	15,600	58
474 Grand St.	10,000	Nov. 13-99	22,600	44
24 Ave. D	7,000	Sep. 26-99	12,500	56
284 Third St.	15,000	Jun- 13-00	26,650	56
386 Eighth St.	6,000	Jan. 6-00	15,000	40
Avenue C, N. E. cor. 7th St.	19,000	Aug. 3-99	25,000	76

	Assessed value.	Record of transfer.		Per-centage.
254 Fourth St	7,000	Sep. 25-00	17,600	40
619 E. 9th St	7,500	Mar. 1-00	17,500	43
252 Houston St	25,000	Feb. 15-00	48,000	52
186 Second St	15,500	Feb. 15-00	27,500	56
297 East 10th St	13,500	Ap'l 26-00	21,500	63
543 East 11th St	6,500	Dec. 29-99	16,250	40
141 Bowery	19,000	Oct. 31-99	35,100	54
163 Bowery & 133 Chrystie St	28,000	Oct. 25-99	66,850	42
68 St. Mark's place	14,500	Mar. 29-00	24,050	60
200 Mott St	10,500	Nov. 21-99	18,750	56
516 & 518 Broome St	16,500	Nov. 23-99	25,000	66
193 Spring St	7,000	Jan. 3-00	12,500	56
14 & 14½ Charlton St	11,000	Jun- 5-99	23,500	47
604 to 608 Broadway	225,000	Mar. 12-00	319,500	70
146 to 154 Thompson St. & 474 to 478 W. Broadway	98,000	Nov. 17-99	147,500	66
34 & 36 Houston St	28,000	Mar. 1-00	35,500	79
190 Bleecker St	11,500	Mar. 1-00	18,000	64
215 Thompson St	9,500	Jan. 3-00	17,000	56
108 Macdougal St	18,500	Jan. -00	29,500	63
110 & 112 Sixth Ave	39,500	Ap'l 23-00	55,000	72
31 & 31½ W. 12th St	15,000	Feb. 27-00	25,000	60
118 W. 13th St	12,000	Sep. 9-99	18,000	67
158 to 160 W. 14th St. & 53 Seventh Ave	24,000	Ap'l 26-00	65,000	37
241 W. 4th St	8,000	Nov. 16-99	11,500	70
				1820

Average, 56⅞ per cent.

616 Section 3.

	Assessed value.	Record of transfer.		Per-centage.
527 & 529 W. 32nd St	12,500	Feb. 1-00	20,000	62
123 Ninth Ave	12,000	Feb. 27-00	27,300	44
449 West 33rd St	4,500	Nov. 15-99	12,000	37
427 West 37th St	5,000	Ap'l 26-00	12,000	42
329 West 17th St	22,000	Dec. 27-99	43,000	51
330 West 18th St	16,500	Dec. 27-99	38,000	44
352 West 26th St	9,000	Jan. 11-00	18,000	50
347 West 35th St	7,000	Mar. 1-00	14,650	48
209 West 26th St	7,000	May 1-00	16,000	44
112 West 25th St	14,000	Jan. 19-00	23,000	61
118 West 29th St	8,000	Nov. 1-99	15,100	53
53 West 16th St	19,000	Mar. 29-00	35,000	54
15 West 22nd St	37,000	Jun- 19-00	110,000	34
5th Avenue hotel	3,000,000	May 28-00	4,225,000	71
Broadway, S. W. cor. 26th	1,575,000	Feb. 28-99	2,725,000	58
29 West 32d St	40,000	Jan. 6-00	68,500	58
31 West 32nd St	40,000	Nov. 29-99	75,500	52
35 West 32nd St	40,000	Nov. 29-99	75,000	53
30 West 33rd St	32,000	Nov. 29-99	51,000	63

	Assessed value.	Record of transfer.		Per-centage.
32 West 33rd St	30,000	Nov. 27-99	60,000	50
34 West 33rd St	30,000	Nov. 29-99	55,000	55
36 West 33rd St	30,000	Nov. 29-99	60,000	50
8 West 35th St	17,000	Feb. 14-00	29,000	59
66 West 36th St	17,500	Nov. 29-99	46,500	37
13 West 36th St	33,500	Jan. 16-00	55,000	61
The Gridiron, Broadway, 5th Ave. and 23rd St	425,000	May 5-99	800,721	53
6 East 23rd St. & 7 East 22nd St	145,000	Feb. 16-00	350,000	41
23d St., N. W. cor. 4th Ave	325,000	Jun- 1-99	440,000	74
320 Fourth Ave	11,000	Feb. 1-00	30,000	37
104 East 23rd St	36,500	Nov. 2-99	105,000	35
360 East 10th St	7,000	Jan. 22-00	18,000	39
405 East 20th St	4,500	Dec. 27-99	10,175	44
1456 to 1460 Broadway	125,000	Jul- 12-00	211,000	59
117 & 119 West 46th St	48,000	Nov. 8-99	80,000	60
				1,733

Average, 51 per cent.

617 Section 4.

	Assessed value.	Record of transfer.		Per-centage.
126 West 49th St	25,000	Dec. 23-99	50,000	50
1758-1760 Broadway	43,000	May 9-99	70,000	61
210 West 59th St	35,000	Dec. 15-99	49,800	70
334 West 42nd St	23,000	Nov. 3-99	38,000	61
351 West 56th St	13,000	Ap'l 2-00	18,000	72
1825 to 1829 Broadway & 6 to 10 West 60th St	65,000	May 16-99	161,000	40
Central park west N. W. cor. 62nd St	21,000	Sep. 19-99	120,000	18
36 West 73rd St	24,000	Nov. 21-00	45,000	53
20 West 76th St	40,000	Oct. 31-99	74,000	54
132 West 72nd St	38,000	Nov. 28-99	60,000	63
157 West 76th St	18,000	Dec. 7-99	34,000	53
Broadway, S. E. cor. 72nd	65,000	Nov. 17-99	137,500	47
353 West End Ave	17,500	Mar. 2-00	36,000	49
49 West 88th St	20,000	Oct. 29-00	32,000	63
158 West 85th St	12,500	Feb. 7-00	32,000	39
152 Riverside drive	42,500	Jan. 12-00	81,500	52
				845

Average, 52 13-16 per cent.

Section 5.

	Assessed value.	Record of transfer.		Percentage.
11 West 46th St	32,000	Dec. 13-99	58,000	55
564-568 Fifth Ave	175,000	Mar. 6-99	350,000	50
21 West 51st St	43,000	Oct. 27-99	85,000	51
23 West 55th St	35,000	Mar. 5-00	56,000	63
43 West 55th St	20,000	Nov. 9-99	28,800	69
22 East 41st St	12,500	Ap'l 30-00	35,000	36
667 Fifth Ave	55,000	Mar. 27-00	72,500	76
691 Lexington Ave	27,000	Feb. 1-00	70,000	38
231 & 233 East 55th	8,000	Nov. 16-99	14,000	57
402 East 58th St	7,000	Ap'l 9-00	14,000	50
5 East 63rd St	46,000	Mar. 30-00	105,000	44
15 East 65th St	56,000	Jan. 27-00	106,000	53
855 Fifth Ave	160,000	Jul- 14-00	275,000	58
S. W. cor. Madison Ave. & 68th St	56,000	Sep. 19-99	150,000	37
15 East 73rd St	26,000	Mar. 12-00	54,000	48
953 Madison Ave	26,000	Ap'l 18-00	42,500	61
165 East 81st St	8,000	Nov. 9-99	17,000	47
407 East 72nd St	10,000	Oct. 27-99	18,750	53
405 East 77th St	11,500	Jan. 27-00	22,000	52
23 East 79th St	32,000	Oct. 11-99	75,000	43
17 East 80th St	31,000	Oct. 24-99	52,000	60
5th Ave., S. E. cor. 84th	58,000	Ap'l 17-00	110,000	53
68 East 86th St	27,000	Dec. 7-99	47,500	57
953-955 Park Ave	40,000	Feb. 28-00	73,000	55
212 East 82nd St	6,500	Nov. 29-99	29,000	22
1621 Second Ave	13,500	Jan. 13-00	26,000	52
229 East 85th St	13,000	Dec. 8-99	24,000	54
223 East 85th St	6,000	Mar. 31-00	10,000	60
1838 Second Ave	16,000	Sep. 30-99	30,000	53
418 to 422 E. 81st St	37,500	Feb. 20-00	51,509	73
444-446 E. 85th St	8,500	Feb. 28-00	32,000	27
				1607

Average, 52 per cent.

618 Section 6.

	Assessed value.	Record of transfer.		Percentage.
59 & 61 E. 115th St	29,000	Feb. 24-00	110,000	26
35 to 41 W. 117th St	70,000	Ap'l 26-00	120,000	58
58 East 105th St	16,000	Nov. 29-99	30,000	53
1895 Second Ave	18,000	Feb. 6-00	26,500	68
2222 First Ave. & 403 & 405 E. 114th St	14,500	Feb. 21-00	32,000	45
335 Pleasant Ave	5,500	Ap'l 26-00	11,000	50
24 West 123rd St	10,500	Dec. 28-99	13,500	77
54 to 62 W. 125th St	139,000	Ap'l 2-00	300,000	46
342 East 119th St	15,000	Jan. 4-00	25,250	59
				482

Average, 53 per cent.

Section 7.

	Assessed value.	Record of transfer.		Percentage.
208 West 116th St	23,000	Feb. 17-00	36,500	63
8 West 102nd St	22,000	Mar. 30-00	36,000	61
58 West 106th St	19,000	Aug. 28-99	29,750	64
850 & 852 West End Av	70,000	Jan. 2-00	125,000	56
242 to 252 W. 103d St	70,000	Ap'l 25-00	194,000	36
203 to 207 W. 106th St	96,000	Jan. 22-00	165,000	59
747 West End Ave	13,500	Mar. 19 00	24,000	56
Broadway, N. W. cor. 110th St., 90 x 75 ft	23,000	May 9-99	81,000	28
154 West 119th St	11,000	Feb. 20-00	15,000	73
112 West 120th St	14,000	Oct. 3-99	31,000	45
441 Manhattan Ave	18,000	Nov. 10-99	29,000	62
364 West 120th St	9,000	Oct. 24-99	15,750	57
351 West 121st St	8,500	Dec. 7-99	17,000	50
507 Manhattan Ave	13,000	May 1-00	35,000	37
352 West 123rd St	9,000	Nov. 25-99	10,550	85
352 St. Nicholas Ave	15,500	Mar. 9-00	19,500	79
82 Lawrence St	4,000	Nov. 15-99	9,500	43
138 West 129th St	18,000	Oct. 1-00	30,000	60
100 & 100½ W. 130th	34,000	May 15-00	50,000	68
195 St. Nicholas Ave	16,000	Jun- 14-00	22,000	73
353 & 355 W. 117th St	80,000	May 16-00	150,000	53
303 to 309 W. 117th St	68,000	Oct. 8-00	125,000	54
				1262

Average, 57 per cent.

619

Section 8.

	Assessed value.	Record of transfer.		Percentage.
1951 Amsterdam Ave	15,000	Jun- 5-99	27,500	54
163rd St. S. S. east of Amsterdam Ave., bl'k 2110, lots 20 to 23	15,000	Mar. 27-99	35,000	43
156th St., east of 8th Ave., block 2105, lot 57	3,000	May 21-00	5,900	51
413 West 156th St., block 2107	12,000	Feb. 28-00	23,500	51
158th & 159th Sts., east of 11th Ave., block 2117, lots 61 & 14	5,500	Nov. 20-99	16,000	34
519 West 163d St., block 2122	9,500	Nov. 20-99	17,500	54
Broadway, N. E. cor. 162d St., bl'k 2122, lot No. 47	1,000	Feb. 19-00	7,500	13
507 West 166th St., block 2123, lot 71	7,000	Nov. 23-99	9,000	78
Audubon Ave., north of 170th St., block 2127, lots Nos. 30, 31, & 32	3,900	Dec. 14-99	8,000	49
550 West 173rd St., block 2129, lot No. 161	8,000	Dec. 1-99	15,000	53
559 West 182d St., bl'k 2154, No. 60	5,500	Aug. 28-99	10,000	55
532 & 534 W. 187th St., bl'k 2156, lots Nos. 72 & 73	10,000	Mar. 30-00	26,000	38
659 West 179th St., bl'k 2163, lot No. 43	5,000	Mar. 9-00	7,000	71
Sheman Ave., N. E. cor. Academy St., bl'k 2225, lot 42	1,700	Dec. 7-99	2,525	67
Vermilyea Ave., bl'k 2226, lot No. 4	600	May 9-00	1,400	43
				754

Average, 50 per cent.

Plaintiff's counsel offered to read in evidence the following affidavit of Frank Bailey with same force and effect as if the statements therein contained were orally sworn to before the referee.

Defendant's counsel objects to the same as immaterial, and on the same grounds heretofore made to the same class of evidence but does not object to the form of the evidence offered.

Objection overruled. Exception.

620 STATE OF NEW YORK, } ss.:
County of Kings, }

Frank Bailey, being duly sworn, says that he is and has been for fifteen years with the Title Guarantee and Trust Company, and for six years its vice-president, and for eight years the secretary of the Bond and Mortgage Guaranty Company, and has had during that period charge of the business of said corporations in the borough of Brooklyn, city of New York.

That during the year 1900, the Title Guarantee and Trust Company passed on upwards of 5,023 titles of real estate situated in the borough of Brooklyn, either for the purpose of closing the sales of such real estate between the buyer and seller or for the purpose of negotiating loans upon said real estate through the said companies, and, in the regular course of business, this deponent knew the prices at which said property was transferred and the price at which it was appraised for the purpose of loaning money upon it and the assessed value thereof as shown by the assessment-rolls of 1900.

During the period of deponent's connection with the aforesaid corporations it has been necessary for him to acquaint himself thoroughly with the actual value of properties of all kinds in all the different sections in the borough of Brooklyn, and deponent is thoroughly familiar with the values of all such property.

During the past three years deponent has been greatly interested in the subject of assessment and taxation in the borough of Brooklyn, and has carefully investigated the ratio between the assessed and real value of properties throughout the entire borough of Brooklyn.

621 From actual knowledge of the sales and the selling price of at least one thousand separate pieces of property in the borough of Brooklyn during each of the years 1899 and 1900, and of the assessed valuations of a large proportion thereof upon the assessment-rolls of 1900, and from investigations separately conducted by deponent, and by the clerks of deponent, deponent has learned and believes the fact to be that the ratio between the assessed valuations upon the assessment-rolls for the year 1900 in the borough of Brooklyn and the actual value of real property in the said borough of Brooklyn averaged 65 per cent. The assessed values being above 65 per cent. of the actual value in some of the older wards and below 65 per cent. in the newer wards of the borough of Brooklyn.

Deponent verily believes that the average assessed valuation of all the real estate in the entire borough of Brooklyn upon the said assessment-roll of 1900 was about 65 per cent. of the actual market value of all of said real estate during said year.

FRANK BAILEY.

Subscribed and sworn to before me this 31st day of July, 1901.

JOHN L. SHERWOOD,
Commissioner of Deeds, City of New York,
Residing in the Borough of Brooklyn.

622 ALEXANDER DUMAS, sworn for the plaintiff, testified:

I live at Flushing, Long island. I have lived in Queens county permanently about fifteen years. At the present time I have charge of the tax searching department of the Title Guaranty and Trust Company of the Borough of Queens. I have held that position ever since they organized the department, about two years ago. Prior to that I was cashier and deputy to the commissioner of the bureau of assessments and arrears, borough of Queens. I held that position about two years. Prior to that I was in the real estate business in Flushing, Long island, dealing in real estate throughout the entire borough of Queens. I have made a list of sales which have come to my knowledge in the borough of Queens for the year 1900 and the latter half of the year 1899, together with a list of the assessed value of those pieces of real property upon the assessment books of that year. I have such a list. I have figured the ratio between the assessed value and the value for which those properties were actually sold. That ratio is about 67 per cent.

Q. In your opinion, based upon this investigation, does that ratio hold together throughout the entire assessment for that year in the borough of Queens, taking it as an average?

Objected to as incompetent.

The REFEREE: Has he examined so as to know?

The WITNESS: I made a fair comparison of them.

By the REFEREE: I give the assessed value and the sale value here. I took these at random from each ward in the borough.

623 Plaintiff's counsel offered the list in evidence.

Mr. COMAN: I would like to examine him before it goes in evidence.

The REFEREE: Certainly.

Cross-examination by Mr. COMAN:

I obtained the information in its entirety from brokers and dealers, through the entire borough, who are clients of the company. The words "consideration in conveyance" is the appellation I classify them under. That is the amount of sale. I compared the records after obtaining this information and found them correct. I obtained the information as to the consideration for the conveyance partly

from the brokers who made the sale and partly through my connection with the company I represent.

By PLAINTIFF'S COUNSEL:

A large percentage of those deals were closed in my hands.

By Mr. COMAN:

The assessed value I took from the assessment-rolls. It would be impossible for me to take all the conveyances that went through my company in rotation; I had to obtain the information from the brokers and the dealers. I did use all the transactions that went through my company during 1900. I took all that the other brokers gave me. I didn't ask if they gave me all that they made. I asked them to give me their latest sales; I made no selection. They did not give me any list from which I picked. They were all during the latter half of 1899, 1900 and part of 1901. I did not tell those brokers what I wanted these sales for.

624 By PLAINTIFF'S COUNSEL:

About 60 per cent. of these deals went through my own hands.

By Mr. COMAN:

I cannot tell which ones, not from these records; I can if I am allowed time to pick them.

Defendant's counsel objected to the evidence so far as the information was derived from other brokers, upon the ground it is hearsay and incompetent.

By PLAINTIFF'S COUNSEL:

I compared the revenue stamps upon the deeds in each case with the expressed consideration, and they corresponded with the amount stipulated as the consideration.

By the REFEREE:

Q. Taking the 60, of which you have personal acknowledge, would the average be the same?
A. Yes; if anything, I think the result would be smaller.
Q. Smaller, how?
A. It would make it about 60 per cent.

By PLAINTIFF'S COUNSEL:

About 60 per cent. of consideration as compared with the assessed valuation; the assessed valuation would be about 60 per cent. of the actual consideration of the sale.

Mr. COMAN: I think I will withdraw that portion of the objection which refers to the information derived from brokers.

By PLAINTIFF'S COUNSEL:

625 The 67 per cent. spoken of as the assessed valuation is 67 per cent. of the actual consideration of the sales.

The statement was received in evidence, of which the following is a copy:

WARD No. 1.

Old Long Island City.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
1	47	41	$1,900	$2,750
1	.....	43	1,900	2,750
1	.....	40	1,900	2,750
1	80	4	1,600	3,300
1	46	15	1,100	2,100
1	28	47	6,000	8,000
1	28	41	1,500	2,100
2	85	30–33	2,350	3,800
2	85	49	2,300	3,500
2	62	5	1,800	2,300
8	85	22–23	600	700
12	77	27	2,100	2,250
12	62	5	1,800	1,525
12	100	118	1,300	1,525

WARD No. 2.

Old Town of Newtown.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
4	4	23	$1,000	$1,700
4	8	18–19	400	700
10	194	53	1,400	2,200
8	33	30	1,500	2,200
8	33	30	1,500	2,200
10	157	41	1,300	1,600
1	79	8 & 62	600	1,000
1	151	22	4,650	6,000
3	77	20	2,500	3,600
1	74	47	2,000	3,400
10	157	28–29	1,000	1,800

626 WARD NO. 3.

Old Town of Flushing.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
3	55	58-59	$2,100	$3,500
1	79	25	1,000	1,600
1	8	16	15,000	20,500
3	58	74	200	1,300
3	89	23	2,000	3,100
1	65	49	1,500	2,080
1	7	Street	2,000	3,000
4	120	26	2,500	4,200
3	89	13	500	700
4	44	9	1,000	1,600
3	75	51	2,000	5,250
3	151	2	1,300	1,700
3	37	45	2,000	3,800
3	82	18	2,500	4,100
3	93	55-57	3,100	4,000
3	77	20	2,500	3,600

WARD NO. 4.

Old Town of Jamaica.

Volume.	Block.	Map.	Lot.	Assessed value.	Consideration in conveyance.
5		30	396	$1,600	$2,350
2	8		166	1,400	1,800
1		9	126	400	575
7	23		16	890	1,200
4	11		20 & 37	450	625
1	12		478	2,000	3,000
1	6		257	2,500	4,110
2	13		87	1,600	2,500
4	2		4	5,000	7,100
1	6		59	2,200	4,000
2	43		278	1,300	2,100
4	10		44	5,000	8,100
1	32		356	1,400	2,500
4	20		331	1,800	2,600
6	24		340 & 342	2,100	3,000

627 WARD No. 5.

Part of Old Town of Hempstead, Known as Rockaway Beach, Arverne, and Far Rockaway.

Vol.	Block.	Lot.	Assessed value.	Consideration in conveyance.
2	60	109	$800	$1,300
1	52	1	2,200	3,800
1	3	48	7,100	10,240
2	24	62	2,400	3,500
1	54	46	700	1,000
2	19	11	2,000	3,500
1	19		3,000	4,500
1	17	53	1,900	2,700
2	54	36	2,000	3,000
1	27	87	7,000	10,500
1	55	13	700	1,000
1	56	3	1,600	1,500
1	39	12	300	525
1	64	42	600	850
1	39	32	600	525
2	72	15	4,000	5,800

Mr. PAGE: We offer in evidence a statement showing the laws under which Central park, in the city of New York, was laid out. Also the proceedings showing that Central park, in point of fact, was laid out under these laws shortly after they were enacted. The acts referred to are as follows:

Chapter 616, Laws 1853, entitled "An act to alter the map of the city of New York, by laying out thereon a public place, and to authorize the taking of the same."

Chapter 101, Laws 1859, entitled "An act to alter the map of the city of New York, by laying out thereon a public place, and to authorize the taking of the same."

628 Section 1 of chapter 771, Laws 1857, entitled "An act for the regulation and government of the Central park, in the city of New York."

Mr. PAGE: This relates to the case of the Sixth Avenue Railroad Company, the line of which company was cut off by the laying out of the park for a distance of two miles and a half, as shown by Plaintiff's Exhibit 63.

It is *stipulated* that said railroad was affected, as shown by said exhibit, by the laying out of Central park, and that said park was duly laid out and established as a public park under proceedings duly had pursuant to the acts above referred to;

Also that the special franchise extension of the Ninth Avenue railroad referred to in the resolution set forth above, pp. 181, 184, was purchased on June 18, 1895, at the comptroller's sale under § 93

of the railroad law by the Metropolitan Street Railway Company and upon its agreement to pay the city annually one-tenth of its gross receipts in addition to the fixed percentages provided for by § 95 of the railroad law.

Testimony closed in the Metropolitan case and in the cases of the twenty-three other companies whose cases have been presented with that of the Metropolitan Street Railway Company.

Adjourned to Friday and Saturday, January 3 and 4, 1902, at the capitol in the city of Albany, 11 a. m., for summing up.

629 Hearing adjourned until 2 p. m.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* Central Crosstown Railroad Company *against* STATE BOARD OF TAX COMMISSIONERS. } Proceeding No. 15.

ALBANY, N. Y., *January* 17, 1902.

Parties met pursuant to adjournment, at 2 p. m.

Appearances.

For plaintiff, George S. Bixby.

For the State Board of Tax Commissioners, Deputy Attorney-General H. B. Coman and J. Newton Fiero.

It is *stipulated* that annexed to the return herein are true and correct copies of the instruments constituting the special franchises of the relator companies.

The plaintiff's counsel offers in evidence a map showing the special franchises of the relator company, and also of the Christopher & Tenth Street Railroad Company, the lessee.

Admitted and marked "Central Crosstown, Exhibit No. 1."

It is *stipulated* that the special franchises of the Central Crosstown Railroad Company were acquired under chapter 160 of the Laws of 1873, entitled "An act to authorize the transportation of passengers in the city of New York by means of street railways to be constructed through certain streets and avenues therein.

630 It is *stipulated* that a true copy of chapter 160 of the Laws of 1873 is attached to the return to the writ of certiorari herein.

It is *stipulated* that the special franchises of the Christopher & 10th Street Railroad Company were acquired under chapter 301 of the Laws of 1873, entitled "An act to authorize the construction of a railroad in Christopher and certain other streets and avenues in the city of New York."

The acts above referred to are received in evidence as exhibits on behalf of the plaintiff.

Plaintiff rests.

Defendant's counsel offers in evidence the reports of the Central Crosstown Railroad Company to the State board of railroad commissioners, as follows:

Report for the year ending December 31, 1899.
Report for the quarter ending March 31, 1899.
Report for the quarter ending June 30, 1899.
Report for the quarter ending September 30, 1899.
Report for the quarter ending December 31, 1899.
Report for the year ending December 31, 1900.
Report for the quarter ending March 31, 1900.
Report for the quarter ending September 30, 1900.
Report for the quarter ending December 31, 1900.

Plaintiff's counsel objects to the reports so offered as immaterial, irrelevant and improper; and on the further ground that
631 they are reports on the operation of the Central Crosstown system, which is comprised of the special franchises of the Central Crosstown Railroad Company and the Christopher & 10th Street Railroad Company.

Objection overruled; exception.

The following are copies of the report so offered:

Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1899.

1899.

Gross earnings from operation		$607,427.84
Operating expenses (excluding all taxes)		427,115.62
Net earnings from operation		180,312.22
Income from other sources than operation		5,118.71
Gross income from all sources		185,430.93
Deductions from income, as follows:		
Interest on funded debt	$15,000.00	
Taxes—On property used in operation of road	3,492.46	
Taxes—On earnings and capital stock	12,431.23	
Taxes—Other than above		
Rentals	82,562.73	113,486.42
Net income from all sources		71,944.51
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost 70.4875 per cent. of earnings (excluding all taxes).
Operating cost 73.115 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

632 *General Balance Sheet.*

December 31, 1899.

Assets.

Cost of road and equipment	$840,000.00
Stocks and bonds of other companies	1,000.00
Other permanent investments	
Supplies on hand	6,828.34
Accrued interest	
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	27,649.25
Cash on hand	4,882.15
Horses, not apportioned	2,032.00
Labor on cars, not apportioned	634.76
Prepaid insurance	1,784.66
Profit and loss (deficiency)	
	$884,811.16

Liabilities.

Capital stock, common	$600,000.00
Capital stock, preferred	
Funded debt	250,000.00
Loans and bills payable	
Interest on funded debt, due and accrued	2,500.00
Dividends unpaid	
Due for wages	601.92
Due companies and individuals (on open accounts)	5,491.96
Rentals due and accrued	6,739.05
Due for supplies	3,845.21
Profit and loss (surplus)	15,633.02
	$884,811.16

633 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1899.

1899.

Gross earnings from operation	$138,601.70
Operating expenses (excluding all taxes)	104,680.92
Net earnings from operation	33,920.78
Income from other sources than operation	1,211.26
Gross income from all sources	35,132.04

Deductions from income, as follows:

Interest on funded debt		$3,750.00	
Taxes	On property used in operation of road	439.98	
	On earnings and capital stock	3,262.65	
	Other than above		
Rentals		20,029.47	27,482.10
Net income from all sources			7,649.94
Net income, as previously reported, for preceding quarters in this fiscal year			42,648.12

Operating cost 75.53 per cent. of earnings (excluding all taxes).

Operating cost 78.20 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

634 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1899.

1899.

Gross earnings from operation	$158,039.65
Operating expenses (excluding all taxes)	107,823.14
Net earnings from operation	50,216.51
Income from other sources than operation	1,186.58
Gross income from all sources	51,403.09

Deductions from income, as follows:

Interest on funded debt		$3,750.00	
Taxes	On property used in operation of road	1,492.48	
	On earnings and capital stock	2,932.18	
	Other than above		
Rentals		23,052.18	31,226.84
Net income from all sources			20,176.25
Net income, as previously reported, for preceding quarters in this fiscal year			50,298.06

Operating cost 68.23 per cent. of earnings (excluding all taxes).

Operating cost 71.03 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

635 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30th, 1899.

1899.

Gross earnings from operation		$147,900.74
Operating expenses (excluding all taxes)		103,538.17
Net earnings from operation		44,362.57
Income from other sources than operation		1,317.98
Gross income from all sources		45,680.55
Deductions from income, as follows:		
Interest on funded debt	$3,750.00	
Taxes—On property used in operation of road	780.00	
Taxes—On earnings and capital stock	3,118.20	
Taxes—Other than above		
Rentals	19,740.54	27,388.74
Net income from all sources		18,291.81
Net income as previously reported, for preceding quarters in this fiscal year		

Operating cost 70 per cent. of earnings (excluding all taxes).

Operating cost 72.64 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

636 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarters Ending December 31, 1899.

1899.

Gross earnings from operation		$162,885.75
Operating expenses (excluding all taxes)		111,073.39
Net earnings from operation		51,812.36
Income from other sources than operation		1,402.89
Gross income from all sources		53,215.25
Deductions from income, as follows:		
Interest on funded debt	$3,750.00	
Taxes—On property used in operation of road	780.00	
Taxes—On earnings and capital stock	3,118.20	
Taxes—Other than above		
Rentals	19,740.54	27,388.74
Net income from all sources		25,826.51
Net income as previously reported for preceding quarters in this fiscal year		18,291.81

Operating cost 68.19 per cent. of earnings (excluding all taxes).
Operating cost 70.59 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

637 *General Balance Sheet.*

December 31, 1899.

Assets.

Cost of road and equipment	$840,000.00
Stocks and bonds of other companies	1,000.00
Other permanent investments	
Supplies on hand	6,828.34
Accrued interest	
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	27,649.25
Cash on hand	4,882.15
Horses, not apportioned	2,032.00
Labor on cars not apportioned	634.76
Prepaid insurance	1,784.66
Profit and loss (deficiency)	
	$884,811.16

Liabilities.

Capital stock, common	$600,000.00
Capital stock, preferred	
Funded debt	250,000.00
Loans and bills payable	
Interest on funded debt due and accrued	2,500.00
Rentals due and accrued	6,739.05
Dividends unpaid	
Due for wages	601.92
Due for supplies	3,845.21
Due companies and individuals (on open accounts)	5,491.96
Profit and loss (surplus)	15,633.02
	$884,811.16

638 State of New York.

Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Year Ending December 31, 1900.

1900.

Gross earnings from operation		$606,125.47
Operating expenses (excluding all taxes)		436,597.89
Net earnings from operation		169,527.58
Income from other sources than operation		5,804.61
Gross income from all sources		175,332.19
Deductions from income, as follows:		
Interest on funded debt	$15,000.00	
Taxes... On property used in operation of road	2,590.50	
Taxes... On earning and capital stock	11,941.15	
Taxes... Other than above		
Rentals	77,916.83	107,448.48
Net income from all sources		67,883.71
Net income as previously reported, for preceding quarters in this fiscal year		

Operating cost, 72.095 per cent. of earnings (excluding all taxes).

Operating cost, 74.4975 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

639 *General Balance Sheet.*

December 31, 1900.

Assets.

Cost of road and equipment	$810,000.00
Stocks and bonds of other companies	1,000.00
Other permanent investments	
Supplies on hand	6,543.47
Accrued interest	
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	
Due by companies and individuals (on open accounts other than traffic)	37,436.51
Cash on hand	8,896.33
Prepaid insurance	531.02
Horses, not apportioned	2,381.50
Profit and loss (deficiency)	
	$896,788.83

Liabilities.

Capital stock, common	$600,000.00
Capital stock, preferred	
Funded debt	250,000.00
Loans and bills payable	
Interest on funded debt due and accrued	2,500.00
Dividends unpaid	
Due for wages	1,032.75
Due companies and individuals (on open accounts)	17,428.87
Rentals due and accrued	7,325.23
Due for supplies	7,179.66
Profit and loss (surplus)	11,322.32
	$896,788.83

640 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending March 31, 1900.

1900.

Gross earnings from operation		$142,658.15
Operating expenses (excluding all taxes)		104,146.42
Net earnings from operation		38,511.73
Income from other sources than operation		1,514.94
Gross income from all sources		40,026.67

Deductions from income, as follows:

Interest on funded debt	$3,750.00	
Taxes—On property used in operation of road	780.00	
Taxes—On earnings and capital stock	3,118.20	
Taxes—Other than above		
Rentals	19,740.54	27,388.74
Net income from all sources		12,637.93
Net income, as previously reported, for preceding quarters in this fiscal year		44,118.32

Operating cost 73.04 per cent. of earnings (excluding all taxes).

Operating cost 75.74 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

641 Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending June 30, 1900.

1900.

Gross earnings from operation		$160,233.15
Operating expenses (excluding all taxes)		111,426.57
Net earnings from operation		48,806.58
Income from other sources than operation		1,299.17
Gross income from all sources		50,105.75
Deductions from income, as follows:		
Interest on funded debt	$3,750.00	
Taxes ... On property used in operation of road	430.50	
Taxes ... On earnings and capital stock	2,916.97	
Taxes ... Other than above		
Rentals	18,785.57	25,883.04
Net income from all sources		24,222.71
Net income, as previously reported, for preceding quarter in this fiscal year		56,756.25

Operating cost 69.54 per cent. of earnings (excluding all taxes).

Operating cost 71.63 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

642 State of New York.

Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending September 30th, 1900.

1900.

Gross earnings from operation		$146,025.57
Operating expenses (excluding all taxes)		106,919.39
Net earnings from operation		39,106.18
Income from other sources than operation		1,402.16
Gross income from all sources		40,508.34
Deductions from income, as follows:		
Interest on funded debt	$3,750.00	
Taxes ... On property used in operation of road	690.00	
Taxes ... On earnings and capital stock	2,952.99	
Taxes ... Other than above		
Rentals	19,695.36	27,088.35
Net income from all sources		13,419.99
Net income, as previously reported, for preceding quarters in this fiscal year		

Operating cost 73.22 per cent. of earnings (excluding all taxes).
Operating cost 75.72 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

643 State of New York.

Central Crosstown Railroad Company.

Statement of the Earnings, Operating Expenses, Deductions from Income and Net Income for the Quarter Ending December 31, 1900.

1900.

Gross earnings from operation		$157,208.60
Operating expenses (excluding all taxes)		114,105.51
Net earnings from operation		43,103.09
Income from other sources than operation		1,588.34
Gross income from all sources		44,691.43
Deductions from income as follows:		
Interest on funded debt	$3,750.00	
Taxes—On property used in operation of road	690.00	
Taxes—On earnings and capital stock.	2,952.99	
Taxes—Other than above		
Rentals	19,695.36	27,088.35
Net income from all sources		17,603.08
Net income as previously reported for preceding quarters in this fiscal year		13,419.99

Operating cost 72.58 per cent. of earnings (excluding all taxes).
Operating cost 74.90 per cent. of earnings (including taxes on all property actually used in operation of road and on earnings and capital stock).

644 *General Balance Sheet.*

December 31, 1900.

Assets.

Cost of road equipment	$840,000.00
Stocks and bonds of other companies	1,000.00
Other permanent investments	
Supplies on hand	6,543.47
Accrued interest	
Due by agents of this Co. on account of traffic	
Due by others (not agents of this company) on account of traffic	

Due by companies and individuals (on open accounts other than traffic)	37,436.51
Cash on hand	8,896.33
Prepaid insurance	531.02
Horses, not apportioned	2,381.50
Profit and loss (deficiency)	
	$896,788.83

Liabilities.

Capital stock, common	$600,000.00
Capital stock, preferred	
Funded debt	250,000.00
Loans and bills payable	
Interest on funded debt due and accrued	2,500.00
Dividends unpaid	
Due for wages	1,032.75
Due companies and individuals (on open accounts)	17,428.87
Rentals due and accrued	7,325.23
Due for supplies	7,179.66
Profit and loss (surplus)	11,322.32
	$896,788.83

Defendant rests.

It is *stipulated* that the following is a correct copy of the agreement of lease between the Christopher and Tenth Street Railroad Company and the Central Crosstown Railroad Company:

645 (Pl'ff's Ex. Chris'r and 10th St. Lease.)

Agreement of lease between Christopher and Tenth Street railroad and Central Crosstown Railroad Company.

Dated April 26, 1890.

This indenture, made this twenty-sixth day of April, 1890, between the Christopher and Tenth Street Railroad Company, party of the first part, and the Central Cross-town Railroad Company, party of the second part, witnesseth:

Whereas, the parties hereto are street surface railroad companies, organized and existing under the laws of the State of New York; and

Whereas, the party of the first part owns or operates a street surface railroad or railroad route in the city of New York from Christopher Street ferry to Tenth Street ferry, East river, and from Christopher Street ferry to Fourteenth Street ferry and Fourth avenue.

Therefore, the party of the first part, in consideration of one dollar paid by the party of the second part, the receipt whereof is hereby acknowledged, and the covenants and agreements herein-

after contained to be kept and performed by the party of the second part, has granted, leased and demised, and by these presents doth grant, lease and demise to the party of the second part and its successors all the railroad of the party of the first part now or hereafter to be constructed during the pendency of this lease, together
646 with all the franchises, rights, powers and privileges for the maintenance and operation of said railroad belonging to the party of the first part, and all the lands, tenements, easements, fixtures and personalty of the party of the first part, except its franchise as a corporation, its shares of capital stock, and the rights expressly reserved or secured to it by this agreement, which franchises, rights and property so leased and demised are subject to the various burdens and conditions by which they are held by the party of the first part.

This lease includes not only all property of the party of the first part on the date when this lease takes effect, but all subsequent additions, including all extensions and branches of said railroad now or which may be hereafter constructed by or on behalf of said party of the first part, and all leased lines connected therewith, and all rights and franchises of the party of the first part to make connections, extensions and branches and leases of other lines and all extensions of the franchises of the party of the first part to maintain, construct and operate a railroad; but this lease is made expressly subject to all debts and liabilities of the party of the first part, which are hereby assumed and are to be paid by the party of the second part as part of the consideration of this lease, with the exception of the principal of the bonded indebtedness of the party of the first part.

An inventory of all the assets of the party of the first part and a statement of all its liabilities and obligations shall be furnished by the said party to the party of the second part as soon as practicable.

To have and to hold the same, and each and every part thereof, unto the party of the second part and its successors for the unexpired term of the charter of the party of the first part, and
647 any extensions of said charter, so far as the same are coextensive or coenduring with the charter, and for the term of those rights which are not coextensive or coenduring with the charter, as the same have been acquired by the party of the first part, to be used, maintained and operated by the party of the second part in accordance with the requirements of the charter, and subject to the conditions of the grants of the said party of the first part.

And the said party of the first part doth also transfer absolutely to the party of the second part the moneys belonging to the party of the first part at the time of the taking effect of this lease which are in the treasury of the party of the first part, whether on deposit or otherwise, less dividends to be declared to stockholders for preceding period since last divided, at rate of seven per cent. (7%) per annum, and all rights of action for the collection of money and all rights of action for the enforcement of rights or privileges for the

maintenance, operation or construction of the road which are proper or essential to such maintenance, construction or operation.

And in consideration of the premises, the said party of the second part hereby covenants and agrees with the party of the first part and its successors and assigns that the party of the second part, at all times during the continuance of this lease, will maintain, manage, use and operate, and keep in good working order, condition and repair, at its own expense, the entire line of said demised railroad, and all extensions and branches thereof, which may be hereafter constructed, and all fixtures and appurtenances thereof which may hereafter be constructed; and also keep the personalty demised by this agreement in good working order, condition and repair, and will keep the railroad supplied with proper motive power,
648 rolling stock and equipment, so that the traffic and business of said railroad shall be encouraged and developed and reasonable accommodation given to the public, and will pay interest upon the present bonded indebtedness of the party of the first part and all taxes, assessments and charges which may have been or may be lawfully imposed upon the party of the first part, or which it is obligated to pay, excepting such as shall already have been paid, and shall and will deliver up to the party of the first part all the property hereby demised and the additions and extensions, and all the personalty demised or used in the maintenance, construction or operation of said railway in good order and repair, at the expiration of this lease or when the same shall become inoperative; and will pay quarterly on the first days of January, April, July and October of each year to the party of the first part an annual rental of eight (8%) per cent. on the par value of the present capital stock of the party of the first part, such par value being one hundred dollars per share, and said capital stock consisting of six thousand five hundred shares.

And the party of the second part further covenants with the party of the first part that it will keep fully insured all the property, both personal and real, included in this lease, and will replace any buildings destroyed by fire or other cause, and will, at the terminatian of this lease or whenever the same ceases to be operative, surrender such franchises, rights and privileges unimpaired by any act of the party of the second part.

The party of the second part also covenants and agrees to save harmless and indemnify the party of the first part from all expenses of the prosecution and defence of any and all actions or legal proceedings which shall be pending at the suit of or against
649 the party of the first part when this lease shall take effect, or which thereafter may be brought for claims thereafter arising; also against any unpaid judgments, costs, assessments, license fees, taxes, orders of court; and also all claims arising, subsequent to the taking effect of this agreement which may arise by the operation of the railroad by the party of the second part, and will indemnify and save harmless the party of the first part from all claims growing out of the maintenance, construction or operation of the

said railroad, and from any act or omission of the party of the second part.

The party of the second part also covenants and agrees that it will, at the termination of this lease, or when it may cease to be operative against the party of the first part for any cause, transfer, deliver and return to the party of the first part, in good condition, the horses, harnesses, cars, tools, implements, machinery, equipments, stable equipments, office furniture and fixtures, and all property of every kind used by the party of the second part in the maintenance and operation of said railroad, except that which is hereby absolutely transferred, or which has passed from existence by death or destruction, and shall also deliver the substitutes, increments and additions provided or made by the party of the second part, and the substitutes for the property impossible to deliver by reason of death or destruction shall be equal in value to that for which they are substituted.

The party of the second part also covenants and agrees to assume, and does hereby assume, all the obligations of the party of the first part, of every name and nature, and to assume, pay and discharge all and every lawful claim, demand, bill, bond, account, charge, indebtedness, cause of action, damages, liquidated or unliquidated, at law or in equity, of the party of the first part, including the taxes, assessments or license fees outstanding or unpaid; and also to carry out, fulfill and perform all contracts, leases or undertakings of the party of the first part outstanding at the time of the taking effect of this lease, and to indemnify and save harmless the party of the first part for any breaches thereof. The party of the second part may, however, at its own expense, contest the validity or obligation of any such charge or claim as fully as the party of the first part might do.

And the said party of the second part further agrees that its assumption aforesaid of the debts and liabilities of the party of the first part includes the obligations of the party of the first part of every description, with the exception as aforesaid of the principal of the bonded indebtedness of the said party, and the party of the second part will carry out and perform all the agreements of the party of the first part and all its leases and contracts. All betterments, increments, additions and substitutes designed for the operation and maintenance of the road shall at once become fixed and charged with the performance of this agreement by the party of the second part whenever the same are placed upon or added to the road, and shall occupy the same position in regard thereto as the property hereby demised.

The party of the first part shall, upon the request, but at the expense of the party of the second part, take such action and execute such instruments as may be approved by the party of the second part for the refunding of the whole or any portion of the present bonded indebtedness of the party of the first part provided that the new bonds shall not exceed in amount of principal or rate of interest

those which they are to supersede. The party of the first part
651 also agrees, if requested by the party of the second part, but also at its expense, to renew upon the best terms practicable, all existing leases, and to take such action as may be necessary to continue all its present leasehold and corporate rights, and to renew its corporate existence, but during the continuance of this lease no new obligations shall be incurred by the party of the first part without the consent of the party of the second part; and neither party shall be at liberty without the consent of the other, given by the board of directors thereof, to add to their respective bonded indebtedness.

The party of the second part will co-operate with the party of the first part at its request in refunding said bonded indebtedness, and will assume and pay the interest upon the new bonds issued in lieu thereof in accordance with their terms, not exceeding, however, the annual interest charge upon the present bonded indebtedness as aforesaid.

And in consideration of the premises, the party of the first part, for itself, its successors and assigns, covenants with the party of the second part and its successors, that the party of the first part and its successors will, at the expense of the party of the second part, subject to all rights of the party of the first part provided for by this agreement whenever required by the party of the second part or its successors, during the continuance of this lease, do and perform all corporate acts which may be necessary or proper to secure to the party of the second part or its successors, the full enjoyment of the demised premises, so far as it has the legal power so to do, including the existing, road, its extensions and branches, rights to acquire, construct, maintain or operate extensions or branches, and also including all franchises, rights, easements and privileges incidental thereto
652 which may be possessed by the party of the first part or its successors, and that it will maintain its corporate organization.

And the party of the second part hereby covenants and agrees to provide without expense, at its office, a room for the meetings of the directors of the party of the first part, if requested so to do, and to pay to the party of the first part any reasonable sum for the purpose of defraying the necessary expenses of the party of the first part in maintaining its corporate organization and conducting its business as follows: For treasurer and transfer clerk a reasonable sum not exceeding $1,000 per annum; for registry of stock, meetings of directors, stationery, postage and other necessary expenses, a reasonable sum not exceeding $500 per annum.

And the said party of the first part further covenants and agrees, that it will hereafter, upon request, subject to the rights of the party of the first part secured by this agreement, execute and deliver such further instruments as may be necessary to carry into full force and effect the objects and purposes of this agreement; that it will, so long as the said party of the second part fulfills its obligations, not interfere with the full and exclusive right of management, use and control of the said demised property by the party of the second part,

or its lawful regulation and determination of the rate of tolls and charges of transportation, or the receiving of the same to its own use.

It is further mutually covenanted and agreed that in case of default in the payment of any sums herein provided to be paid by the party of the second part by way of interest on bonded indebtedness or rental, or otherwise, or in case of default in any of the covenants herein contained on the part of the party of the second part,
653 then at the expiration of thirty days after demand for performance has been made by the party of the first part upon the party of the second part, if such default still continues, the party of the first part shall have the right to immediateiy enter upon and take possessien of the property hereby demised, and the equipment thereof, and have and possess the same as of its former estate, together with any improvements and betterments then made and existing on said property, which right shall not lapse or cease to exist on account of any condonation of another default by implication or agreement; and such reentry shall not impair the claim of the party of the first part for lawful damages for any defaults of the party of the second part.

Upon this lease going into operation, the party of the second part hereby agrees to elect, so soon as it can lawfully be done, into its board of directors four of the directors of the party of the second part.

It is further understood and agreed that the party of the second part receives the cash in the treasury of the party of the first part at the time of the taking effect of this lease as owner and not as lessee thereof, subject, however, to this reservation and condition, viz., that if the party of the first part should resume possession of the demised property on account of any default of the party of the second part, then the said money so received by the party of the second part shall be deemed to have been a loan instead of an absolute transfer, and shall be returned by the party of the second part to the party of the first part, with the remainder of the property of which the party of the first part takes possession.

It being the intention of the parties hereto that this lease shall take effect, so far as the law will permit, on and after the first day of May, 1890, it is hereby agreed, notwithstanding anything
654 to the contrary which may be hereinbefore contained, that the party of the first part shall account for and pay over to the party of the second part all its gross earnings and receipts of every description from and after the first day of May, 1890, and that the party of the second part will assume, pay and hold the party of the first part harmless against all operating expenses and other obligations of the party of the first part from and after that date of a similar nature to the obligations and liabilities to be assumed by the party of the second part from and after the time when this lease is ratified by the stockholders of both companies in the manner prescribed by law, filed in the office of the secretary of the State.

In witness whereof, the said parties have caused their respective seals to be affixed and their respective corporate names to be sub-

scribed by their presidents and secretaries respectively to this indenture the day and year first above written.

THE CHRISTOPHER AND TENTH STREET RAILROAD COMPANY.
LOUIS DE BEBIAN, *President.* [SEAL.]

GEORGE W. LINCH, *Secretary.*

THE CENTRAL CROSSTOWN RAILROAD COMPANY.
GEORGE S. HART, *President.* [SEAL.]

MILTON I. MASSON, *Secretary.*

655 STATE OF NEW YORK, } *ss.:*
City and County of New York, }

On this 26th day of April, 1890, before me, the subscriber, a notary public, personally appeared Louis De Bebian and George W. Linch, to me severally personally known, and known to me to be respectively the president and secretary of the Christopher and Tenth Street Railroad Company and the persons who executed the foregoing instrument, and they severally acknowledged to me that by authority and direction of a resolution of the board of directors of said railroad company, they executed the foregoing instrument on behalf of said company as and for its free act and deed.

And the said Linch, being duly sworn, did depose, that he is the secretary of the said railroad company; that said De Bebian is the president thereof; that he knows the corporate seal of said company, and that by authority and direction of a resolution of the board of directors of said railroad company the foregoing instrument was signed by said De Bebian as president, and by deponent as secretary of said company, and the corporate seal of said company thereto affixed by deponent, and that the seal now affixed to said instrument is the corporate seal of said company.

JOHN T. CLOKEY,
[NOTARIAL SEAL.] *Notary Public, County of New York.*

656 STATE OF NEW YORK, } *ss.:*
City and County of New York, }

On the 26th day of April, 1890, before me, the subscriber, a notary public, personally appeared George S. Hart and Milton I. Masson, to me severally personally known, and known to me to be respectively the president and secretary of the Central Cross-town Railroad Company, and the persons who executed the foregoing instrument, and they severally acknowledged to me that by authority and direction of a resolution of the board of directors of said railroad company, they executed the foregoing instrument on behalf of said railroad company as and for its free act and deed.

And the said Masson, being duly sworn, did depose, that he is the secretary of said railroad company; that said Hart is the president thereof; that he knows the corporate seal of said company, and that by authority and direction of a resolution of the board of directors of said railroad company, the foregoing instrument was signed by said Hart as president, and by deponent as secretary, of said company, and the corporate seal of said company thereto affixed by deponent, and that the seal now affixed to said instrument is the corporate seal of said company.

JOHN T. CLOKEY,
[NOTARIAL SEAL.] *Notary Public, County of New York.*

657 I, Milton I. Masson, secretary of the Central Cross-town Railroad Company, do hereby certify that at a meeting of the stockholders of the said Central Cross-town Railroad Company, held at the office of the company on the twenty-eighth day of May, 1890, and duly called pursuant to chapter 305 of the Laws of 1885, a vote by ballot was taken for the adoption or rejection of the foregoing lease or agreement, and that two-thirds of all the votes of stockholders, cast in person or by proxy at the said meeting, were for the adoption of the said lease or agreement.

In testimony whereof, I have hereunto set my hand and the seal of the said Central Cross-town Railroad Company this 28th day of May, 1890.

[SEAL.] MILTON I. MASSON, *Secretary.*

I, George W. Linch, secretary of the Christopher and Tenth Street Railroad Company, do hereby certify that at a meeting of the stockholders of the said Christopher and Tenth Street Railroad Company, held at the office of the company, on the twenty-eighth day of May, 1890, and duly called pursuant to chapter 305 of the Laws of 1885, a vote by ballot was taken for the adoption or rejection of the foregoing lease or agreement, and that two-thirds of all the votes of stockholders, cast in person or by proxy at the said meeting, were for the adoption of the said lease or agreement.

In testimony whereof, I have hereunto set my hand and the seal of the said Christopher and Tenth Street Railroad Company, this 28th day of May, 1890.

[SEAL.] GEORGE W. LINCH, *Secretary.*

658 STATE OF NEW YORK, *Office of the Secretary of State,* } ss:

I have compared the preceding with the lease of the Christopher and Tenth Street Railroad Company to the Central Crosstown Railroad Company, filed and recorded in this office on the 29th day of May, 1890, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the secretary of state,

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

at the city of Albany, this 29th day of May, one thousand eight hundred and ninety.

[SEAL.] FRANK RICE,
Secretary of State.

(A statement containing the substance of the foregoing lease was received in evidence at pages 254–8.)

Testimony closed.

(Here follows map marked p. 658*a*.)

659 *Stipulations.*

It is *stipulated* that any exhibit not set forth in full in this record may be exhibited in any court before which this proceeding may come at any time and be considered by said court as if printed in full in these papers.

GEORGE S. BIXBY,
Attorney for Plaintiff.
JOHN C. DAVIES,
Attorney-General, for Defendants.

It is *stipulated* that the foregoing record contains all the evidence taken before the referee bearing upon the issues herein.

GEORGE S. BIXBY,
Attorney for Plaintiff.
JOHN C. DAVIES,
Attorney-General, for Defendants.

660 (*Report of Earl, Referee.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Assessment of 1900. No. 15.

To the supreme court:

I, Robert Earl, referee in this case, find the following facts and conclusions of law, to wit:

Findings of Fact.

1.

That at the times hereinafter mentioned, the Central Crosstown Railroad Company (hereinafter also called the relator) was and still is a street railroad corporation created and existing under and pursuant to the laws of the State of New York, and has its principal office in the city of New York.

2.

That on January 8th, 1900, the relator was also the lessee
661 of a street railroad franchise which was owned by the Christopher and Tenth Street Railroad Company.

3.

That the several streets, avenues and public places on which the relator has constructed and is engaged in operating a street surface railroad are set forth and enumerated in Exhibit 1.

4.

That a map of the borough of Manhattan in the city of New York was put in evidence by the relator as Exhibit 1, upon which are correctly delineated the street railroad franchises owned and leased by the relator as they existed on the second Monday, that is the 8th day of January, 1900, and which map is hereby found to be correct and to contain a correct delineation of said franchises and is made a part of this finding.

5.

That on January 8th, 1900, the special franchise owned by the relator embraced one granted right or privilege.

6.

That said right and privilege had been granted on certain conditions and subject to the performance by the grantee thereof of certain terms, which conditions and terms appear in the schedules and charters annexed to the return herein and are hereby made a part of this finding.

7.

That by the terms of the said grant to the relator herein-
662 before referred to, it is obligated to pay to the city of New York, on the first day of December of each year, three per cent. of the gross receipts from the operation of its railroad during said year.

8.

That the franchises owned and leased by the relator were on January 8, 1900, operated by the relator under and as one system.

9.

That prior to January 8, 1900, the relator had executed and delivered to the American Loan and Trust Company, as trustee, a mortgage to secure the payment of its bonds, amounting to the sum of $250,000, which mortgage conveyed to said trustee all street railroad franchises, railways, railroad routes and the real estate and personal property owned by the relator. All of the bonds secured by such mortgage, amounting to $250,000, had, prior to January 8, 1900, been issued and were outstanding and unpaid at that date.

10.

That by virtue of statutes of the State, there was granted to and became vested in the relator, and its predecessors in title, the fran-

chise to construct, maintain, operate and use the street railroad as above described, which franchise is property and constitutes an interest in perpetuity in the streets.

11.

That the relator has filed with the State Board of Tax Commissioners all reports required by law or required to be filed by
663 said commissioners. Copies of such reports are in evidence and reference is made thereto for their contents.

12.

That thereafter and on or about the 20th day of March, 1900, the State Board of Tax Commissioners, claiming to act under and pursuant to chapter 712 of the Laws of 1899, proceeded to fix and determine the valuation of the special franchise of the relator company at the sum of $1,197,020, and did thereupon make the assessment of such special franchises at the sum aforesaid.

13.

That immediately after making the said assessment, the State board gave to the relator company a notice in writing stating in substance that such assessment had been made, and that the total valuation of the relator's special franchise was $1,197,020, and that the State board would meet at its office in the city of Albany, on the 10th day of April, 1900, at 10 o'clock a. m., to hear and determine any complaint concerning such assessment.

14.

That the relator company, by its counsel, appeared, pursuant to such notice, at the time and place therein stated, before the State board and requested to be informed by the board concerning and as to what was the amount which said board had determined to be the valuation of the tangible property of the relator company, and as to what was the amount fixed and determined by the board to be the valuation of the tangible franchises, rights, and permissions of the relator company; and as to what was the method, rule or
664 principle, if any, adopted and applied in ascertaining and determining the valuation; but the board refused to give the relator company the whole or any part of the information so requested.

15.

That the relator company thereupon complained of the assessment, and filed with the State board a written statement under oath specifying the grounds of its complaint.

16.

That thereafter and on or about the 30th day of April, 1900, the State Board of Tax Commissioners, still claiming to act pursuant to

chapter 712 of the Laws of 1899, finally determined the valuation of the special franchise of the relator company to be the sum of $585,693, and on or about April 30, 1900, filed with the department of taxes and assessments in the city of New York a written statement of such valuation as finally fixed and determined by the State board, and at or about the same time gave notice to the relator company that such written statement had been filed with the department of taxes and assessments of the city of New York.

17.

That thereafter the commissioner of taxes and assessments of the city of New York prepared the assessment rolls of the real and personal property of the several parts of the city for the year 1900, and entered thereon, before the final review or certification of such rolls by them, the valuation of such special franchise of the relator company as fixed by the State board, and having annexed thereto their certificate that the assessment rolls were correct in accordance
665 with the entries of the several books or records in that department, duly verified the same and delivered such assessment rolls to the municipal assembly of New York city, as required by law, on the first Monday of July, 1900.

18.

That within fifteen days after the final completion and filing of the assessment roll in the city of New York, the relator company applied for and obtained a writ of *certiorari* to review the assessment, pursuant to which writ this proceeding is pending.

19.

That in making such assessment against the relator, the State board fixed upon a certain figure as covering the value of the tangible and intangible property together, and did not separately arrive at a valuation of the tangible and intangible parts respectively.

20.

That the tangible property of the relator company, the value of which was included in the assessment so made by the State board, had for many years previous to such assessment been entirely assessed by the local assessors in the city of New York.

21.

That for the purpose of this proceeding, it has been stipulated on this hearing by the parties that the value of the tangible property connected with the special franchise of the relator company, based upon its cost of reproduction, was, on January 8, 1900, the sum of $52,980.

666

22.

That the defendants valued the property of the relator at what they deemed its full and fair value, taking into consideration the

original report made by it to the board, subsequent supplemental or special reports, the report of the State railroad commissioners, the records of the State comptroller's office, the reports of the New York City department of assessment and taxes, and after consideration of information from experts retained by the board and of their confidential appraisers and special agents, and they also had before them the *Poor's Manual* and *Financial Chronicle*, and considered all of the elements, factors and considerations which they were enabled to gather from these sources. They based their valuation of the tangible property solely upon the cost of reproduction, with an allowance for depreciation.

Defendants considered, among other things, in arriving at their valuation of relator's property, the fact that it had the right, partly owned and partly acquired from another company, to operate two continuous lines from the East river to the North river, and that it operated such lines; that it only owned the right to run over one of such lines, and that it leased the other of such rights; that the franchise of the relator was more or less valuable by reason of the acquisition of such right, whether the relator had contracts with another company to run over its lines; and the fact of its having control and operation of a leased line.

They had before them and considered a map showing the entire system of the Central Crosstown Railroad Company. They considered the market value of its stocks and bonds for what it might be worth, and not as conclusive or as an absolute measure of valuation. They considered the earning power of the property of the company as reported to them by it. They considered the tax
667 rate in New York county, also net and gross earnings, the character of the motive power used, the amount of percentage tax or license fee paid to the city. They also considered the value of real estate off the line of the road; the fact whether earnings were large or small, and assessed the special franchise at what the members of the board agreed was the full and fair value thereof.

That in addition to these facts, which were before the commissioners previous to the hearing of relator, the commissioners had upon and after said hearing before them, and considered, the statements, evidence, affidavits and arguments upon such hearing for the purpose of arriving at their final conclusion as to the valuation of relator.

That in assessing the special franchises of the relator, and in arriving at the valuation thereof, the defendants did not include in such assessment the valuation of any property except such as is in, above, upon, under or running through the public streets and public places of said city, including the franchises rights, authority or permission to construct, operate and maintain its foundation, roadbed, substructure, superstructure, with their appliances in, upon, above, under or through said streets and public places. They did not include in such assessment or valuation the value of the right to be, or the franchise to be a corporation. They did not in-

clude the value of the good will of the business carried on by such corporation, nor did they include the value of any property other than that above stated and described as having been included by them. That such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or right to use such streets and public places which the defendants were able to ascertain.

668 23.

That the annual gross earnings of the relator for the year 1889 were $608,047.96. Such earnings are derived in part from the operation of the relator system of railroads in the borough of Manhattan, in the city of New York, consisting of the Central Crosstown Railroad Company and its leased line, the Christopher and Tenth Street Railroad Company, and also in part from the transfer of passengers between the relator's said system of roads and the Metropolitan system of railroads in the borough of Manhattan, city of New York.

24.

That the actual and true value of the special franchise of the relator as finally determined by the defendants and as I find is $585,693, and no evidence was given before me to show that it is less.

25.

That other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and therefore to equalize this assessment with the assessment of such other real estate there should be deducted from the $585,693 the sum of $193,278.69, and there remains the sum of $392,414.31 as the value of the special franchise of the relator for the purposes of assessment and taxation under the special franchise tax act.

26.

That the following is a correct statement of the assessed value of real estate in the State and in the city of New York, respectively, for the years hereinafter stated:

Total assessed real estate in State for 1899.....	$4,811,593,059
Do. do. 1900.....	5,093,025,771
Total assessed value all special franchises in State for 1900	266,202,759
669 Total ass'd val. of tang. prop. for year 1899 included in the spec. franchises ass'd in 1900 for whole State.....	96,061,902

Total assessed value of real estate in New York city by boroughs for 1899.

Manhattan and Bronx	$2,178,605,905
Kings	609,822,267
Queens	103,752,600
Richmond	40,264,692
Total	$2,932,445,464

Total assessed value of all real estate in the city of New York, exclusive of tangible property included in the special franchise, by boroughs, for the year 1900.

Manhattan and Bronx	$2,369,997,504
Kings	651,383,900
Queens	104,427,872
Richmond	42,723,924
Total	$3,168,533,200

Total assessed value of all special franchises in the city of New York, by boroughs, for the year 1900.

Manhattan	$166,763,669
Bronx	7,272,249
Brooklyn	36,743,057
Queens	6,544,312
Richmond	2,356,064
Total	$219,679,351

Total assessed value of the tangible property for the year 1899, included in the special franchises assessed in 1900 for the city of New York, by boroughs.

Bronx	$3,768,600
Brooklyn	18,048,775
Manhattan	50,428,750
Queens	2,935 600
Richmond	1,403,500
Total	$76,585,225

670 *Conclusions of Law.*

1. That chapter 712 of the Laws of 1899, is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchise for the purpose of assessment and taxation.

2. That the relator had a hearing and due process of law before the

defendants upon the review of their assessment on the 10th day of April, 1900, and was not there deprived of any of its legal or constitutional rights.

3. That it was lawful to assess as one franchise, the franchise, right, authority or permission which the relator had in the streets of New York, and which it operated as one system.

4. That to equalize its assessment with the assessment of other real property in the city of New York, the relator is entitled to a reduction from its assessment of the sum of $193,278.69, and that the assessment as thus reduced, to wit, the sum of $392,414.31, must be taken as the value of the relator's special franchise for the purposes of assessment and taxation under the act above referred to, and that the necessary corrections should be made to that end in the assessment roll and tax books in the city of New York.

ROBERT EARL, *Referee.*

671 (*General Opinion of Earl, Referee.*)

Special franchise tax cases.

David B. Hill,
Frank H. Platt,
Charles A. Collin,
Samuel A. Beardsley,
Henry J. Hemmens,
Charles F. Brown,
William F. Sheehan,
William N. Dykman,
John C. Tomlinson,
George S. Bixby,
Wm. H. Page, Jr.,

For relators.

John C. Davies,
Henry B. Coman,
J. Newton Fiero,
Louis M. Martin,

For respondents.

State constitution.

EARL, *Referee:*

I think it will be most convenient to consider in separate opinions the points relating to the validity of the special franchise tax law, and I will, therefore, in this opinion confine myself to the contention of the relators that the law violates the home-rule provisions of the constitution. Those provisions, as found in the constitution of 1894, in section 2, of article 10, and copied from the constitution of 1846, are as follows: "All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct." The claim is, that the legislature could not take their essential functions from these local officers as they existed

at the time of the adoption of the constitution and transfer them to State officers appointed by the governor as provided in the special franchise tax act, chapter 712, Laws of 1899. It is there
672 enacted that the terms "land," "real estate," "real property," as used in the tax laws, shall include, among other things, all structures on, over, under or through streets, "including the value of all franchises, rights or permission to construct, maintain or operate the same, in, under, above, on or through streets, highways, or public places," and that such a franchise for the purpose of taxation shall be known as a "special franchise:" that a special franchise shall be deemed "to include the value of the tangible property of a person, co-partnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise;" and that "the tangible property so included shall be taxed as part of the special franchise." It was made the duty of the State Board of Tax Commissioners annually to fix and determine the valuation of each special franchise subject to assessment in each city, town, village or district and to file within the time specified with the clerk of such city, town or village a written statement of the valuation of each special franchise in such city, town, village or tax district as fixed and determined by such board, and that the valuation so fixed shall be the assessed valuation on which all taxes, based on such special franchise in such city, town or village for State, municipal, school or highway purposes, shall be levied during the ensuing year; that each city, town, or village clerk shall, within five days after the receipt by him of a statement of the assessment of a special franchise by the State Board of Tax Commissioners, deliver a copy of such statement, certified by him, to the assessors or other officers charged with the duty of making local assessments in each tax district in such city, town or village, and that the valuation of a special franchise as so fixed by the State Board of Tax Commissioners shall be entered by the assessors or other officers in the proper column
673 of the assessment-roll. Provision is made for the review of assessments so made by a writ of *certiorari* directed to the Board of State Tax Commissioners and not to the local assessors, and an adjudication in the proceeding instituted by such writ is made binding upon the local assessors and upon the local collectors of the taxes, as if they had been parties to the proceeding. The taxes thus imposed are to be collected and disposed of like other taxes upon the same assessment-roll.

The very able and exhaustive arguments made before me upon this constitutional question show that much is to be said upon both sides of the question, and that at least expressions can be found in reported opinions to sustain the contention of each side. In examining the many cases to which my attention has been called, I must bear in mind the admonition contained in the opinion of Chief Justice Marshall in Cohens *v.* Virginia (6 Wheat., 264–399) as follows: "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the

cases in which those expressions are used." There is also a rule, many times announced by judges, that the legislative will is not to be thwarted as in conflict with the Constitution, unless such conflict is clear and undoubted, and that whenever an act of the legislature can be so construed and applied as to avoid conflict with the Constitution and give it the force of law such construction should be adopted. The legislature has supreme legislative power, except as such power is limited in the Federal or State constitutions, and we must be able to point to some unmistakable constitutional limitation before such power can be curtailed. A further rule must, however, also be observed, that a thing within the intent of
674 the Constitution, if that intent can be gathered from the instrument itself, considered in all its parts, or from the history connected with it of which a court can take notice, is for all purposes to be regarded as within its words and terms; and that the plain purpose of the Constitution will not be thwarted by a too close adherence to its letter. By the observance of these rules courts will avoid the two extremes of a too liberal and of a too strict construction of the Constitution.

My attention has been called to no decision in this State or any other State which absolutely dominates this case, and I must look through all the cases which may have some analogy to this and find, if I can, considering the reasons and the public policy upon which the home-rule provisions in the constitution are based, and, comparing those provisions with the act of 1899, some reasons or rules which may guide me to a correct conclusion.

The system of home rule for local divisions of the State has come down to us from remote times. It was introduced into this country by the earliest colonists after centuries of struggle in England for its development and establishment there. Upon its vigorous existence depends the successful working of our republican institutions, and it has always been sedulously guarded by our wisest statesmen.

At no time in the history of our State was the idea of home rule by the people more dominant among our statesmen than at the time of the adoption of the constitution of 1846. By that instrument many offices theretofore filled by appointment were to be filled by elections by the people. The system of small senatorial, assembly and judicial districts was inaugurated, and the aim was to bring power home closely to the people as its purest and safest depository.

675 As has been often said by judges, the Constitution was not a new system of government, but it was designed to embody and conserve institutions which the people had developed, to which they were habituated, and which they had found most beneficent in operation and most conducive to their welfare.

In some cases the framers of the constitution named local officers and specified the mode of their election, as in section 17, article 6, and section 1, article 10, in reference to justices of the peace, sheriffs, county clerks and district attorneys. The functions of those officers were not specified, but it was not designed that they should

exist without functions. An officer without office, duty, function, power, would, in fact, be no officer. The purpose was not only to provide for the election of those officers, but in conserving home rule, to clothe them with the general functions, which, in the whole history of our State down to the adoption of the constitution, they had exercised. As those officers are named in the constitution, they have been called constitutional officers, and their offices cannot be abolished by the legislature. Their functions may be regulated and increased, and they may also be diminished, but not so as to impair their usefulness and efficiency as local officers; and so it has been decided by the courts of this State. The constitution of 1821 provided that "sheriffs and clerks of counties, including the register and clerk of the city and county of New York, shall be chosen by the electors of the respective counties." By an act of the legislature in 1843 certain judges of the court of common pleas in the city and county of New York were authorized to appoint the clerk of that court; and in Warner *v.* The People (2 Denio, 272) it was held that that act was unconstitutional, on
676 the ground that it took from the county clerk the substance of his office and transferred his most important duties to an officer to be appointed by judges and not chosen by the people; and all that was said in the opinion written in that case has reference to such a state of facts. In The People *v.* Keeler (29 Hun [Supreme Court Reports], 175) the act, chapter 251 of the Laws of 1882, was under consideration. The act provided that the Albany County penitentiary should thereafter be the county jail of the county, and it required the sheriff to remove the prisoners from the building, then occupied as a jail to the penitentiary. It made the superintendent of the penitentiary, who was appointed by the board of supervisors, the jailer, and gave him the custody and control of all persons confined therein. The act was assailed as unconstitutional, and it was held that, in so far as it deprived the sheriff of the custody and control of the jail and the prisoners therein and gave such custody and control to the superintendent of the penitentiary, it deprived the sheriff of common-law powers and duties pertaining to his office, and violated the constitutional provision requiring sheriffs to be elected by the electors of the county. Here, again, the functions transferred to the new officer were some of the most substantial and important pertaining to the office of sheriff, without which he could not discharge many of the duties which had always theretofore attached to his office. Speaking of this case in 99 New York, 583, Judge Finch said that "the powers and duties of the sheriff were so curtailed or destroyed as practically to subvert his office and bestow it on another."

Justices of the peace at the time of the adoption of the constitution of 1846 and for many years thereafter were a majority of
677 the board of town auditors, and it was their duty, with the supervisor and town clerk, to audit all accounts against the towns of which they were officers. This duty was taken away from them at one time and conferred upon a board of town auditors

elected at the town meetings. This act took away from them very important functions and transferred them to other officers, and yet, so far as I know, the act was never challenged on constitutional grounds. So, in 1846, and before and afterward, justices of the peace constituted the board of excise of their town. This function of granting licenses to keep hotels and sell intoxicating liquors was a very important one, and yet, by the excise act of 1896, this function was taken from them and transferred and vested elsewhere. That act came under consideration in the case of The People *v.* Murray (149 N. Y., 367), and, while it was assailed on other constitutional grounds, there was no suggestion that it violated the constitution by taking away from justices of the peace some of the functions which they had for a long time exercised. So an act passed in 1857 constituted a board of county excise commissioners in each county and transferred to it the functions previously exercised by the town excise board, composed of justices of the peace; and later excise commissioners were elected at town meetings; and the function of granting liquor licenses was vested in them. Justices of the peace, for many years before 1846, and afterward, were in all the towns of this State inspectors of election at town meetings, but now that function has been taken away from them and conferred upon others in many towns in this State. None of these acts, so far as I know, was ever assailed as unconstitutional, in that important functions were taken away from justices of the peace and transferred to other officers.

678 Those acts interfering with important functions of justices of the peace, as they had been exercised for many years prior to 1846, left those officers with their most material functions, and did not materially interfere with the system of home rule intended to be entrenched in the constitution.

In People *v.* Howland (155 N. Y., 270) portions of the act, chapter 22 of the Laws of 1896, were assailed as unconstitutional on the ground that they deprived the justices of the peace of the town of Fort Edward of their constitutional functions. The act provided for the election at town meetings of a police justice, who was to receive a salary, and have all the jurisdiction of a justice of the peace in criminal matters, and also for the election of a police officer, as a town officer, who was also to receive a salary and have all the functions of a town constable in criminal matters. The act then provided that no justice of the peace in that town should be compelled to issue process of any kind in any criminal matter, and that if he did do so, he should receive no compensation therefor, and that no sheriff, under sheriff, deputy sheriff or constable should be compelled to execute any criminal process issued by any of the justices of the peace of the town, and if they did do so, they were to have no compensation. The town justices were, therefore, left with all their jurisdiction in criminal matters unimpaired, but not obliged to act, and if they did act, they were denied all compensation, and none of the executive officers named were obliged to execute their criminal mandates. The provisions of the act assailed were held to be un-

constitutional by a divided court. The real ground of the decision is a little uncertain, but I think the effect of the decision is that the legislature attempted, by indirection and in evasion of the
679 constitution, to deprive justices of the peace, constitutional officers, of all their criminal jurisdiction which they had always had, and thus *pro tanto* to abolish the office, and that, as it could not wholly abolish the office, it could not abolish such a substantial part of it.

Supervisors are constitutional officers, article 3, section 26, of the present constitution, and so they were under the constitution of 1846. They are town officers, and, as members of the board of supervisors, also county officers. The act, chapter 89 of the Laws of 1901, came under consideration in the case of The People *ex rel.*, etc., *v.* The Board of Supervisors of Oneida County, recently decided. The act appointed certain commissioners who were authorized to sell the present court house and county clerk's office in that county and to acquire a site and build a suitable building thereon for the use of the county as a court house and for other public purposes, at an expense not exceeding $350,000. The act commanded the supervisors to provide the money needed to meet all the expenditures of the commissioners under the act. The sole question of any importance involved in the case was the validity of the act under the home-rule provisions of the constitution, and Judge Andrews, presiding at the special term, in a very able opinion, held the act to be constitutional. He said: "Supervisors are constitutional officers. Their rights and duties generally are such as had for many years existed at the time the constitution was adopted, and a law which deprived them of all their powers would, doubtless, be invalid. But, on the other hand, the legislature may, to some extent, modify and regulate those powers. The test is whether the act called in question is an attempt to evade the fundamental law, or
680 whether it is merely a permissible modification of the supervisors' duties. (People *v.* Keeler, 29 Hun, 175; Astor *v.* The Mayor, 62 N. Y., 567; Matter of Application of the Mayor, 99 N. Y., 570.) A statute depriving a board of supervisors of the power to build a certain court-house seems to me to belong to the latter class. It is a power that in the nature of the case may be seldom exercised by the board, and even when this power is taken away the board remains, substantially, the board of supervisors." The judgment ordered by Judge Andrews was unanimously affirmed in the appellate division upon his opinion, and also by the court of appeals. It is quite true that a board of supervisors under the general laws does not often have occasion to build a court-house or other county building, but its power to do so is to be exercised whenever the exigency arises. The fact that it is rarely called upon to exercise the power can have no bearing upon the constitutional question, except to show that the transfer of the power to other officials, leaving it with all its other functions, is not a substantial invasion of its constitutional prerogatives, or a substantial impairment of the system of home rule intended to be guarded in the constitution.

In The City of Syracuse *v.* Hubbard (64 App. Div., 587) the facts were these: The city, in the year 1899, incurred liabilities in excess of the appropriations and the charter limitations. Under its charter it was not liable for the excess, and its then auditing body, the common council, was prohibited from auditing or paying the same. The act, chapter 402 of the Laws of 1901, was, therefore, passed authorizing and directing the defendants designated in the act to audit all outstanding claims against the city which were incurred in 1899 and which the city was legally or equitably obligated
681 to pay. The act was assailed as in violation of the home-rule provisions of the constitution now under consideration. The claim was that the auditors named in the act were, in a real sense, city officers, as they performed exclusively city functions, which, in that city, had always been discharged by officers elected or appointed in the locality. The learned judge writing the opinion said: "The power of audit conferred upon the defendants and which, if anything, made them city officers, was beyond the auditing power possessed by the common council in 1899, or at the time of the adoption of the constitution. So that if the existence of the office, as a city office, is to be determined by the functions of the new officer (People *v.* Pinckney, 32 N. Y., 377–382), it did not exist at the time the constitution took effect and the restriction upon the legislature would not apply." Then, after citing Astor *v.* The Mayor and other authorities, he said "These authorities give support to the proposition that if the legislature in providing for the accomplishment of a particular specific object which it has power to accomplish designates some person to perform a specified duty that might be performed by a local city or town officer, the fact that such person is charged with that duty does not make him a city or town officer within the meaning of the constitution so long as the general duties or functions of the local officers are not interfered with." There the claims to be audited were such as the local auditors never had authority to audit, although they had the general function of auditing. Here the local assessors never had the authority to assess these franchises, although they had the general functions of assessing property, and the special franchise tax act left those functions un-
682 touched. The ground of that decision must be that in such a case there is no material or substantial invasion of home rule, and that thus the constitution has not been violated.

In section 2, article 10, above quoted, the constitution does not specify any city, town or village officer by name, and the provision was not for the benefit of any officer, but for the benefit of the municipalities. There had always been in this State down to the adoption of the constitution certain municipal officers elected or appointed in the municipalities whose general functions were well understood. It was not the purpose of the framers of the constitution to perpetuate those officers, but their purpose was to perpetuate their general functions for the purposes of home rule in the possession of officers, by whatever name known, elected or appointed in the locality. The offices of assessors, collectors and commission-

ers and overseers of highways, overseers of the poor and other local officers in cities, towns and villages could be abolished, and their general functions transferred to other officers under different names, but upon the sole condition that such new officers should be locally elected or appointed as provided in the section. So long as such functions remained strictly or substantially local so that the officer discharging them would, in fact and substance, be a local officer, they could not, by any legislative subterfuge, be transferred to any officer appointed by the governor or the legislature, or by any authority outside of the locality.

The assessment of property for the purpose of taxation has always in this State been a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is entrenched in the constitution to secure to the
683 people the home rule to which they had always been accustomed, and of which the people of our race have always been tenacious. The constitution does not concern itself with these officers or even with their functions, except as they conduce to home rule. The end aimed at is home rule, and so long as any act of the legislature does not substantially impair the right of home rule, there being no other objection, it cannot be successfully assailed. These views, I think, are sustained by the decisions in this State. In the People *v.* Draper (15 N. Y., 532) the section of the constitution now under consideration was very thoroughly discussed by very able judges. In that case the validity of the metropolitan police act was challenged, which combined the four counties of New York, Kings, Richmond and Westchester, and provided for the appointment by the governor of five police commissioners, who, with the mayors of New York and Brooklyn, were to have the appointment and control of the police force of the entire district. The court held that the commissioners thus appointed were not city officers, and that, therefore, the section of the constitution above quoted was not violated. That case held, in effect, that district officers or even State officers could be appointed by the governor to discharge some important functions in cities which had before been discharged by city officers. It has been several times followed and frequently cited as authority by the courts of this State, and, although it has been criticised, it has never been overruled. Its reach should not be extended beyond the precise case then before the court. The legislature, for police purposes, combined into a district contiguous territory inhabited by people largely having common interests and business relations, whose welfare and safety it was supposed would be
684 promoted by a common police force under one head. The municipalities were left with all their other powers, and that act was held not substantially to invade the right of home rule belonging to them.

In People *v.* Pinckney (32 N. Y., 377) it was held that the act of 1865, creating a metropolitan fire district, composed of the cities of Brooklyn and New York, and empowering the governor to appoint the commissioners thereof, who were to have the entire management

in the city of New York of the fire department, did not violate the home-rule provisions of the constitution, for the reason that firemen were not officers within the meaning of the constitution, and the Draper case was approved.

In Board of Health *v.* Heister (37 N. Y., 661), an act of the legislature which constituted the metropolitan sanitary district, composed of the territory embraced within the metropolitan police district, composed of the four counties above mentioned, was assailed as unconstitutional, among other grounds, because it clothed the governor with power to appoint the health commissioners for the district in violation of the home-rule provisions in the constitution, and this contention was overruled on the authority of the Draper case.

In The People *v.* Shepard (36 N. Y., 285), an act creating a capital police district, composed of certain portions of Albany and Rensselaer counties and embracing within its bounds various towns and villages, and providing for the appointment by the governor of the police commissioners, was held not to violate the constitution, on the authority of the Draper case.

In People *v.* Acton (48 Barb., 524), affirmed in the court of appeals, the twelfth section of chapter 806 of the Laws of 1867, which transferred to the board of metropolitan police all the powers and
685 duties conferred by law upon the mayor and common council and all other boards and officers of the city of New York (except the metropolitan board of health) in respect to a large number of important matters, was held to contravene the home-rule provisions of the constitution above quoted, approving, however, the Draper case, and that while the legislature might have the power to take the discharge of such duties from the mayor and common council of New York, it could not do so without imposing them upon officers or boards locally elected or appointed. In the act thus condemned there was a large and substantial invasion of municipal right of home rule and local self-government.

In People *v.* Raymond (37 N. Y., 428), an act was under consideration which authorized the governor to appoint commissioners of taxes and assessments for the city of New York, and it was held that the officers thus to be appointed were city officers, and that the act was, therefore, unconstitutional. The Draper case was referred to and recognized as authority for the point therein decided.

In the Board of Excise *v.* Barrie (34 N. Y., 657) it was held that the act of 1866, creating a metropolitan board of excise, composed of persons appointed by the governor, violated no provision of the constitution.

In People *v.* Bull (46 N. Y., 57), People *v.* McKinney (52 N. Y., 374), People *v.* Crooks (53 N. Y., 648), Rathbone *v.* Wirth (150 N. Y., 459), People *v.* Mosher (163 N. Y., 32), Devoy *v.* The City of New York (36 N. Y., 449), and the Brenner case, recently decided in the court of appeals, several acts of the legislature were held unconstitutional, which, in various ways, sometimes directly and some-
686 times indirectly deprived municipalities of the choice of their local officers in violation of the home-rule provisions of the constitution.

The act, chapter 638 of the Laws of 1873, to establish the Rensselaer police district, authorized the governor to appoint the police commissioners of the district constituted by annexing to the city of Troy three small patches of sparsely-settled territory, in all, less than a square mile; and in The People *v.* Albertson (55 N. Y., 50), the court held, considering all its provisions, that the act was really intended for the city of Troy alone, and that all else was merely colorable; that the police commissioners were really city officers, and that the act, therefore, violated the home-rule provisions of the constitution and was unconstitutional. The Draper case was criticised by the judge writing the opinion, but not overruled, and it was left as authority for the precise point therein decided. As that case decided that the police commissioners were really city officers who should, under the constitution, be elected or appointed in the locality, it does not aid us much in the solution of the problem we now have in hand.

The act, chapter 564 of the Laws of 1865, conferred upon the commissioners of Central park, appointed by the governor, the exclusive care, management and control of portions of Sixth avenue and certain other streets in the city of New York for the purpose of regulating, grading and otherwise improving the same. In Astor *v.* The Mayor (62 N. Y., 567) that act was assailed on the ground that it violated the home-rule provisions of the constitution by transferring to officers appointed by the governor functions theretofore always discharged by local officers elected or appointed in the locality; and it was held that the act was valid, evidently on the ground that there was
687 no material invasion of home rule, the local officers being left with their general powers over all the other streets and avenues in the city. Miller, J., writing the opinion of the court, said: "The act does not transfer the general powers of local officers elected by the people which existed at the time of the adoption of the constitution in violation of that instrument or confer them upon other officers not elected, but merely confers authority in a particular case to perform acts which have an especial relation to, and connection with, the general purpose and design of the public improvement to carry out which the board of commissioners was organized. It would be carrying the doctrine of non-interference with local officers far beyond any reported case to hold that in no case whatever could any of the powers existing in a local officer at the time of the adoption of the constitution be taken away without violating the provisions cited. If the doctrine contended for is correct, it would be in conflict with the course of legislation in regard to the Central park from its first organization."

The case of Astor *v.* The Mayor was followed in The People *ex rel.* Kilmer *v.* McDonald (69 N. Y., 362), where it was held that an act, chapter 623, Laws of 1870, with subsequent acts amendatory thereof, constituting avenue commissioners named therein, for the purpose of widening an avenue in Saratoga Springs, was not unconstitutional as in conflict with section 2, of article 10 of the constitution. Ra-

pallo, J., writing the opinion of the court, said: "These commissioners do not take the place of the commissioners of highways, but are appointed for the special purpose of exercising a power, which is undoubtedly possessed by the legislature, of widening a certain designated avenue, by proceedings different from those which
688 could be taken by the commissioners of highways under existing general laws of the State. The commissioners of highways still continue in office and the charge of the avenue thus widened devolves upon them after the fulfilment of the office of the avenue commissioners."

In The People *ex rel.*, etc., *v.* Cheritree (6 T. & C., 473) it was held that the acts, chapter 623 of the Laws of 1870; chapter- 293 and 500 of the Laws of 1872, for laying out certain avenues and streets in Saratoga Springs, by commissioners appointed in the act of 1870, were not unconstitutional. In Hanlon *v.* The Supervisors of Westchester (57 Barb., 383), it was held, on the authority of the Draper case, that the legislature had power to appoint commissioners to lay out an avenue in a town, although there were already three commissioners of highways in such town competent to act, and that such commissioners were not town officers.

I have now examined the principal authorities from the courts of this State touching the question now under consideration, and also the statutes therein considered. From the foundation of our State government almost yearly there have been frequent invasions by the legislature and under statutes enacted by it of the rights of municipal home rule fully as serious as that made by the special franchise tax law, which, so far as I can find, have gone unchallenged in the courts. The legislature has either appointed or authorized the governor to appoint park commissioners, court-house commissioners, water commissioners, bridge commissioners and highway commissioners, in many cases thus interfering, to some extent, with the functions of local officers. It has from time to time diminished the powers and duties of constitutional local officers, such as
689 sheriffs, justices of the peace and supervisors, thus depriving them of some of the functions they had prior to 1846.

The cases from other States to which my attention has been called shed no new or further light upon this question. Some of them arose under different constitutional provisions, nearly all of them bear upon phases of the questions of home rule and local self-government embodied in fundamental law, about which there is no longer dispute in the courts of this State. They deal with statutes which took from local officers a large share of their functions and transferred them to officers appointed by the legislature or governor, or authorized the appointment of purely local officers in the same way. They are a class of cases of which the Raymond case, the Bull case and other like cases, the Keeler case, the Albertson case and the Howland case, above referred to, are typical.

In consideration of all the authorities to which my attention has been called it is difficult and, probably, impossible to formulate a general rule by which we can always accurately determine when

the home-rule provisions of the constitution have been invaded. While many cases may be put into a class dominated by decisions already made, there will always be border cases which must depend upon the facts they present, and in the solution of which analogies, general principles and public policy must be resorted to. In the case of constitutional officers, so called, their functions cannot be entirely taken away. In the case of the local offices in cities, towns and villages, provided for in that portion of section 10 now under consideration, they can be abolished, but their substantial functions must remain in officers locally elected or appointed so as to preserve substantially home rule as it existed prior to 1846 and after-
690 ward. Those functions are not defined. They may be modified or regulated, but must be left, so far as needful to secure substantial home rule, to people living in the municipal divisions named. They cannot be taken away directly or indirectly or by any legislative subterfuge. But so long as they remain so that it can be said with truth that home rule is left to the localities, no complaint on constitutional grounds can be made of legislative invasion. The question in every case arising under these home-rule provisions is, Has the legislature taken away from officers elected or appointed in the locality any function essential to home rule? If it has, its acts must be condemned; if it has not, the act must stand. As some of the cases above referred to show, the legislature may take away from local officers some of the functions they have always exercised without materially impairing municipal home rule. The legislature has taken from sheriffs the right and duty, which they always before possessed, to hold and execute convicted murderers and conferred that right and duty upon State officers. They still remain sheriffs with their substantial function unimpaired. It can take away from justices of the peace jurisdiction and functions which they always exercise, and they still remain justices for the substantial purposes of home rule. It can take from highway commissioners functions which they had always exercised over certain streets and bridges, and confer such functions upon officers appointed outside of the locality under its authority. It can, to some extent at least, take away from cities the management and control of their parks without depriving them of the substantial rights of home rule. It can take away from supervisors some of the functions which they had always exercised, and from boards of supervisors the right
691 to build the public buildings needed for the use of their county, and they are still left with the great body of home-rule functions. The transfer tax law is, undoubtedly, constitutional, although the localities have nothing whatever to do with the appraisal of the property to be taxed, or the levy, or the disposition of the taxes. It does not matter that this tax is really a tax upon the right of succession; it is, nevertheless, a tax, and its amount is determined by valuing property. Before the death of the owner it was assessed by local assessors to him. After his death and the ownership has passed to others, it is appraised to furnish the basis of taxation by officers not elected or appointed in the locality like

local assessors. This is no material invasion of home rule. The assessors remain with substantially all the functions they ever exercised. There is a body of home-rule functions intended to be protected by the constitution, and so long as those functions are left to local officers, so that in every real sense home rule and local self-government, as it existed prior to 1846, is preserved, no complaint can be made of legislative usurpation.

So that in any particular case it may be a matter of the degree and the extent of the invasion. It is no answer to these views to say that if the legislature can take away some of the functions of a local officer, it may take them all away and thus create complete centralization of power at Albany. My reasoning and all the authorities show that this cannot be done. There can be a vast centralization of power at Albany within the pale of the constitution which may be very unwise and yet not unconstitutional, and the only remedy for this is in the hands of the people, who are the real sovereigns, and who can, however temporarily swayed,
692 be trusted to conserve the fundamental principles upon which our republican institutions rest and to promote the general welfare.

Now, does the special franchise act substantially invade the home-rule rights of cities, towns and villages? Are they in any material manner deprived of local self-government? The franchises taxed under the act were never before taxed. (Smith *v.* The Mayor, 68 N. Y., 552; People *ex rel.*, etc., *v.* Commissioners of Taxes, 104 N. Y., 240; People *ex rel.*, etc., *v.* Coleman, 126 N. Y., 443; People *ex rel.*, etc., *v.* Barker, 146 N. Y., 304, and The People *ex rel.*, etc., *v.* Barker, 152 N. Y., 47.) It is true that they were property, but they were not so specified in the statutes relating to assessments and taxation that they could be assessed or taxed. They are intangible property, generally without the market or salable value other real estate has for the guidance of local assessors. They most always extend through several taxing districts and frequently through several municipalities. It is, at least, very difficult to assess their value. With the best of advantages and with the aid of expert skill and great experience and study it is difficult, if not impossible, to reach a satisfactory basis for their valuation. We know from our observation and experience how incompetent local assessors are to deal with such property generally not wholly within any assessment district. Under such circumstances, with this new species of property, generally having no precise circumscribed *situs* like other real property, the legislature in this act made this property taxable, and committed its assessment to the State Board of Tax Commissioners, who can study the problems involved in the assessment and call to their assistance expert said and resort to all needed sources of in-
693 formation as to values. Having all the franchises in the State to assess, they can obtain knowledge and skill in valuing such property which local assessors could never be expected to obtain. How can it be said that, as to this new species of taxable prop-

erty thus circumstanced, the localities have been deprived of local self-government by the law in question?

But it is said on behalf of the relators that the tangible property used in the streets in connection with these franchises was before assessable by the local assessors and that, therefore, the function of assessing such property could not be transferred to State officers. It is true that this tangible property was before taxable, but it is intimately connected with the franchises. Indeed, it has very little value without the franchises and would have no existence but for the franchises, and the franchises would be of no value without tangible property to operate them, and so they are inseparable. (People *v.* O'Brien, 111 N. Y., 1.) I do not believe that, taking the assessment of these two kinds of property from the local assessors was a substantial violation of the right of local self-government.

It is true that the property thus assessed is of great value in the cities of New York and Brooklyn and throughout the State, but it constitutes but a small fraction of the property of the whole State. Notwithstanding the subtraction made by this act from the functions of the local assessors, they still remain assessors, with the great body of their functions untouched, and the self-government of the localities is not seriously or materially impaired. The assessments as made by these State officers are to be placed by the local assessors upon their assessment rolls and then the taxes to be levied
694 in the localities are to be apportioned to the same by local officers, and they are to be collected and disposed of like other taxes by local officers.

I do not wish to be misunderstood. I do not hold that every little violation of the constitution can be condoned. No real violation can be. Where a statute is challenged as violating the constitution the question must always be, Is there a violation? And when there are definite constitutional provisions no departure whatever from them can be allowed. I mean such provisions as are found in sections 1, 2 and 6 of article 1, and in many other sections of the constitution.

I do not think that the fact that the writ of *certiorari* to review these assessments is required to be directed to the State tax commissioners alone and that no local officials are made parties to the proceedings has any bearing upon this constitutional question. All right of review, except before the commissioners themselves, could have been withheld. They are the proper parties to represent the State and all parties interested in upholding the assessments.

My conclusion is, therefore, that there is not, by the special franchise tax act, such a clear violation of the home rule provisions of the State constitution as authorizes any court to pronounce it invalid on that ground.

695 *Special Franchise Tax Cases.*

Federal Constitution.

EARL, *Referee:*

I will, in this opinion, examine the contention of the relators that the special franchise tax act, chapter 712 of the Laws of 1899, violates the provision of the Federal Constitution forbidding the State to pass any "law impairing the obligation of contracts." The arguments and illustrations bearing upon this contention have been so numerous (as well as able and ingenious) that it must not be inferred because some of them have not been noticed in this opinion that they have been overlooked, as I have given all of them careful consideration.

These franchises were all granted by municipalities under statutory authority, or by the State, and the terms and conditions of each grant were specified in the law or ordinance granting the same. The grantees were required to pay, as a consideration or in full satisfaction, a gross sum, or annual sums, or a percentage on receipts, or license fees, and generally to conform to other conditions and stipulations contained in the grants more or less burdensome in the use of the franchises granted. These were all considerations for the grants (Mayor, etc., *v.* Second Avenue Railroad Company, 32 N. Y., 261); and most of them were periodical or continuous during the existence of the franchise rights granted. While the grantees were under continual obligations of some sort, the grantors were
696 under no obligation to do anything subsequently to the grants, except what every grantor is bound to do, to wit, not to nullify or impair the grant. So far as concerns the grantors, the grants were executed grants, while, on the part of the grantees, the obligations were generally executory, and thus these grants were contracts in a broader sense than grants completely executed on both sides when made. (State of New York *v.* The Mayor, etc., 3 Duer, 119; Brooklyn Central Railroad Company *v.* Brooklyn City Railroad Company, 32 N. Y., 264; Mayor, etc., *v.* Second Avenue Railroad Company, *supra.*) There were no stipulations or provisions in any of these grants about taxes or in any way exempting the grantees from taxation for and on account of the franchises granted.

The franchises were, in every sense, property in their nature usable, vendable, transferable, inheritable under the laws of the State, and thus constituted real wealth in the ownership of the grantees. (People *v.* O'Brien, 111 N. Y., 1; The People *ex rel.*, etc., *v.* Deehan, 153 N. Y., 528; Ingersoll *v.* Nassau Electric Railroad Company, 157 N. Y., 453.) But they were not, prior to 1899, taxable, for the reason that they were not described or designated as property for the purposes of assessments and taxation in the tax laws of the State. (Smith *v.* The Mayor, 68 N. Y., 552; People *ex rel.* Panama Railroad Company *v.* Commissioners of Taxes, 101 N. Y.,

240; The People *ex rel.* Union Trust Company *v.* Coleman, 126 N. Y., 443; People *ex rel.* Manhattan Railroad Company *v.* Barker, 146 N. Y., 304; Same *v.* Same, 152 N. Y., 417.)

The act of 1899 is not a special law subjecting these franchises to taxation, but it is a general law amending the general tax
697 law. It amends subdivision 3 of section 2 of that law so as to read as follows, the words in italics being new:

"The terms 'land,' 'real estate' and 'real property,' as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, *including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways, or public places;* all railroad structures, substructures and superstructures, tracks and iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, *including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon or through any streets, highways or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power,*
698 *gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes;* all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. *A franchise, right, authority or permission specified in this subdivision shall, for the purpose of taxation, be known as a 'special franchise.' A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.*"

Then further amendments provide for the annual assessment of the special franchises by the State Board of Tax Commissioners, for a review before them, for a writ of *certiorari* to review in the courts their final determination and for placing upon the assessment-roll, prepared by the local assessors, the assessments so made by the State board. It also provides as follows:

"Deduction from special franchise tax for local purposes.—If, when the tax assessed on any special franchise is due and payable

under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, copartnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, copartnership, association or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway, or public place, shall be deducted from any tax based on the assessment made by the State Board of Tax Commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, copartnership, association, or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax-roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law."

The act does not levy any tax upon these franchises, but taxes are to be levied upon them under the general laws of the State in the same manner as upon other property placed upon the assessment rolls.

The taxing power of the State is practically unlimited. Everything that is really property of value to the owner may be taxed in common with all property, unless plainly exempted from taxation by some sort of valid contract. But a burden imposed upon property for public purposes under the guise of taxation, the purposes or necessary effect of which is arbitrarily to confiscate property or to impair contracts, cannot be upheld.

It is conceded that if the city or the State had exacted from these corporations for the use of their franchises additional conditions, or further payments than originally stipulated, such exactions would

have been illegal as impairing the obligation of contracts. While the franchises belonged to the State, they were public property held like other public property for the benefit of the whole people of the State, or for the benefit of the people living in the locality where they had their *situs*. But when they were granted, they became private property like other private property, and became a part of the mass of property within the State in private ownership
701 segregated from the public ownership and there is no reason of public policy founded upon their nature to condemn their taxation.

All the lands in this State are held in some way under grants from the State. In most cases the grantees paid what at the time was considered an adequate and full consideration for the lands granted. It would be a novel proposition to contend now that the lands thus granted—grants being in law contracts—could not be taxed like the mass of other property. Suppose the State leased land for a long term of years, or in perpetuity, for rent to be paid, or other considerations to be performed annually, will any one seriously contend that such lands could not be taxed without the impairment of the obligation of contracts? And yet there would be there, as here, a continuous contract on the one part not to annul or interfere with the lease, and on the other part to pay the stipulated rent. Lands thus granted or leased no more enter into the general mass of property and private ownership than these franchises granted to individuals or corporations.

It is not true that a State cannot tax its own executory contracts, or municipal executory contracts. Unless there is a stipulation in bonds issued by the State or a municipality exempting them from taxation, they are taxable in the hands of the owners like the notes or bonds of individuals or corporations. (The People *ex rel.* Manhattan Fire Ins. Co. *vs.* The Commissioners, 76 N. Y., 64.) And such taxation does not impair the obligation of such contracts. While such bonds stipulate for the payment of definite interest, they are property, and taxable as such, like other property. No part of the interest can be withheld under the guise of taxation. The contract must be performed as made, and after the interest has been
702 paid to the person entitled, then the money so paid becomes taxable like other personal property belonging to such person. The tax upon these franchises is not an additional compensation for them, exacted by the State, but it is a burden imposed upon them, as upon all other property, for the support of the government which protects them and makes their use valuable.

So I cannot conceive how it can be successfully contended that these franchises cannot be taxed by the municipalities and the State like other property without impairing the obligation of contracts, and no authority has been brought to my attention upholding such contention. The Mayor *v.* Second Avenue Railroad Co. (32 N. Y., 261) and The Mayor *v.* Third Avenue Railroad Co. (33 N. Y., 42) were cases wherein the city undertook to exact from the railway companies license fees beyond those stipulated in the original contracts

and are no authority whatever for the contention that the State or the city cannot impose taxes upon such corporations for their franchises. The City of Walla Walla *v.* Walla Walla Water Company (172 U. S., 1), The Little Falls Electric and Water Company *v.* The City of Little Falls (102 Fed. Rep., 663), New Orleans Gas-Light Company *v.* Louisiana Light, etc., Company, (115 U. S., 650), New Orleans Water-Works Company *v.* Rivers (115 U. S., 674), Louisville Gas Company *v.* Citizens' Gas-Light Company (115 U. S., 683), St. Tammany Water-Works Company *v.* New Orleans Water-Works Company (120 U. S., 64), Chicago *v.* Sheldon (9 Wall. 50), Coast Line Railway Company *v.* Mayor of Savannah (30 Fed. Rep., 646), Western Paving, etc., Company *v.* Citizens' Street Railway Company (128 Ind., 525), North Western Telephone Company *v.* City of Minneapolis (83 N. W. R., 572), City Railway Company *v.* Citizens' Street Railway
703 Company (166 U. S., 577), Los Angelos *v.* Los Angelos Water Company (177 U. S., 558), and the recent case in the United States Supreme Court (City of Detroit *et al. v.* Detroit Citizens' Street Railway Company), are all cases where an attempt was made by cities to change or destroy contracts under which franchises had been granted, and, as I conceive, in no way reach the question of taxation of the franchises as property like other taxable property.

The case of Murray *v.* Charleston (96 U. S., 62) is much relied on by the relators; but it is very far from an authority for their contention. There the City of Charleston had issued stock, generally called bonds, agreeing therein to pay the principal, together with six per cent. interest, payable quarterly. The city was authorized by its charter "to make such assessments on the inhabitants of Charleston, or those who held taxable property within the same, for the safety, convenience, benefit and advantage of the city as shall appear to them expedient;" and, claiming to act under that authority, the city passed ordinances to the effect that the holders of its stock should be assessed the value thereof and that the amount of the tax, by virtue of such assessment, in each case should be deducted by the city treasurer from the amount of interest payable upon the stock before payment, and that the balance only after such deduction should be paid. It was held that the stocks could be taxed by the city like other personal property, but not in such wise as to impair the obligation of the contract; that the city was bound to pay the six per cent., and the whole of it, and could in no other way discharge its obligation; that it could not withhold a portion and discharge its obligation by paying over the balance; that it was
bound to pay over the interest, and not until after such com-
704 plete payment and the money had become the property of the payee and under his control could it be seized for a tax against it. The judge writing the opinion said: "The obligation undertaken, therefore, was both to pay the interest at the rate specified and to pay it to the plaintiff. Such was the contract and such was the whole contract. It contained no reservation or restriction of the duty described. But the city ordinances, if they can have any force, change both the form and the effect of the

undertaking. They are the language of the promisor. In substance, they say to the creditor, true, our assumption was to pay to you quarterly a sum of money equal to six per cent. per annum on the debt we owe you. Such was our express engagement; but we now lessen our obligation. Instead of paying all the interest to you, we retain a part of it ourselves and substitute the part retained for a part of what we expressly promised you. * * * Is, then, property which consists in the promise of a State or of a municipality of a State beyond the reach of taxation? We do not affirm that it is. A State may, undoubtedly, tax any of its creditors within its jurisdiction for the debt due to him and regulate the amount of the tax by the rate of interest the debt bears if the promise be left unchanged. A tax thus laid impairs no obligation assumed. It leaves the contract untouched. But until payment of the debt or interest has been made as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor, namely, payment to him without a violation of the Constitution. The true rule of every case of property founded on contract with the Government is this: It must first be reduced into possession and then it will become subject, in common
705 with other similar property, to the right of the Government to raise contributions upon it. It may be said the Government may fulfill this principle by paying the interest with one hand and taking back the amount of the tax with the other. But to this the answer is that to comply truly with the rule the tax must be upon all the money of the community, not upon the particular portion of it which is paid to the public creditors, and it ought, besides, to be so regulated as not to include a lien of the tax upon the fund. The creditor should be no otherwise acted upon than as every other possessor of money; and, consequently, the money he receives from the public can then only be a fit subject of taxation when it is entirely separated and thrown indistinguishable into the common mass." (See comments upon this case in 76 N. Y., 64, above cited.) This case really upholds this taxation. These franchises have forever gone from the city into the possession, control and private ownership of the grantees and are a part of the common mass of private property in the State, and, as such, are taxable without the violation of the obligation of any contract.

In the case of Hartman *v.* Greenhow (102 U. S., 672) the court considered the funding act of the State of Virginia, which provided that the coupons attached to the bonds issued by the State in pursuance of that act should be receivable at and after maturity for all taxes, debts and demands due the State, and that this should be expressed on their face. After the issuance of its bonds in accordance with the act, the legislature of Virginia passed another act, declaring that thereafter it should not be "lawful for the officer charged with the collection of taxes or other demands of the
706 State" then due or which should thereafter become due "to receive in payment thereof anything else than gold and silver coin, United States Treasury notes, or notes of national banks of

the United States." Here was a plain violation of the contract, and the act was held to be unconstitutional. Subsequently the Virginia legislature passed still another act providing that from the interest payable out of the treasury on those State bonds there should be retained a tax equal in amount to fifty cents per hundred dollars of their market value; and that it should be the duty of every officer of the State charged with the collection of taxes to deduct from the matured coupons, which might be tendered to him in payment of taxes or other dues to the State, such tax as was or might thereafter be imposed on the bonds. That act was in the same case held to be unconstitutional as impairing the obligation of contracts, following the case of Murray *v.* Charleston, above cited.

The Federal Constitution provides that Federal judges shall "receive for their services a compensation which shall not be diminished during their continuance in office." During the civil war an income tax, a specific tax, was imposed upon the salaries of these judges, and the disbursing officer was required to deduct such tax from their salaries before payment, simply paying the balance. The judges protested against the deduction of the tax in the payment of their salaries on the ground that it was a diminution of their salaries, and the protest was allowed on the opinion of the Attorney-General, who said: "A specific tax by the United States upon the salary of an officer to be deducted from the amount which otherwise would by law be payable as such salary is, in my opinion, a diminution of the compensation to be paid to him" prohibited by the Constitution, and he cited Dobbins
707 *v.* The Commissioner of Erie County (16 Peters, 435) and Pacific Insurance Company *v.* Soule (7 Wall., 434). This conclusion was reached on the same principles which guided the court in the case of Murray *v.* Charleston. It was the duty of the United States to pay the whole salary, and then, having paid it, the money thus paid at once became taxable like other property. The salaries could not be thus diminished by withholding a part thereof on any pretext. But so soon as the constitutional obligation was discharged by payment and the salary had passed into the ownership of the judge, it became taxable like other property. Here these franchises have passed to these corporations, and they own them as their private property by an absolute indefeasible title, and they may be taxed like other property.

In New Orleans City and Lake Railroad Company *v.* New Orleans (143 U. S. 192) it was held that a city ordinance imposing, pursuant to a statute of the State, a license tax upon the business of running cars for the transportation of passengers did not impair the obligation of a contract made before the passage of the statute by which the city sold to a railroad company for a large price the right of way and franchise for twenty-five years to run a railroad over certain streets and according to certain regulations, and the company agreed to pay to the city annually a real estate tax and the city bound itself not to grant during the same period a right of way to any other railroad company over the same streets. The sole authority relied upon

in that case by the plaintiff in error was Gordon *v.* Appeal Tax Court (3 How. [U. S.], 133), which is also cited here by counsel for the relators. Mr. Justice Gray, writing the opinion in the New
708 Orleans case, spoke of the Gordon case as follows: "In Gordon *v.* Appeal Tax Court (3 How., 133), upon which plaintiff in error much relied, the only point decided was that an act of the legislature continuing the charter of a bank upon condition that the corporation should pay certain sums annually for public purposes, and declaring that upon its accepting and complying with the provision of the acts the faith of the State was pledged not to impose any further tax or burden upon the corporation during the continuance of the charter, exempted the stockholders from taxation on their stock, and so much of the opinion as might, taken by itself, seem to support this writ of error, has been explained or disapproved," citing the cases. To the same effect is the Delaware railroad tax (18 Wall., 206).

This franchise tax takes away nothing granted and it impairs no contract. The imposition of the tax is not an effort to exact more compensation for the franchises, but to compel the owners thereof to pay, in common with other owners of property, their share of the public burdens.

It is said that the right to tax is the right to destroy, and hence that if the legislature can tax these franchises it can practically destroy them, and hence nullify its grants. This legislative power is theoretically true and in theory reaches all legislative and municipal grants. But there is no danger from such a power in general laws imposing taxes upon all property. If it were attempted by special legislation, the courts could extend their protecting arm and stay confiscation under the guise of taxation, and if attempted by general laws, the people would find a remedy.

If the argument of the relators is to be carried to its logical results, then the State could never tax any franchises of any
709 kind granted by it without impairing its contracts, and the millions which have been taken from corporations under franchise tax laws in all parts of this country during the past twenty years have been taken in violation of the Federal Constitution and have been illegally exacted.

It is said that these franchises cannot now be taxed because they were not taxable at the time they were granted. They were not by any law or contract exempted from taxation. They were property of immense value under the protection of the Government, and there was no reason in their nature for exempting them from taxation. There was no contract expressed or implied that they should never be compelled to bear their share of public burdens like other property. The legislature, having unlimited power of taxation, may increase taxation and may bring within its scope new kinds of property values and thus disappoint the plans and expectations of many in all business relations. It may for the first time impose succession or transfer taxes, income taxes and many others that can be imagined, and thus disturb business relations, investments of

property and contracts between individuals in reliance upon existing laws, and yet such taxes cannot be condemned as violating the obligation of contracts. Persons who deal with the State and take grants from it do so with full knowledge of its power of taxation, and if they wish to be exempt from taxation as to any property or rights derived from the State, they must acquire such exemption by unmistakable stipulations in their contracts.

There are among these franchises some which were granted upon considerations which were stated in the grants to be in full compensation for the franchises granted, thus showing that the con-
710 siderations were compensation for the property granted. No just inference can be drawn from this that the considerations were in full or instead of taxation in common with other property. The grantees of such franchises are in no better or other condition as to taxes that the grantees of other lands of the State for full compensation.

In examining this claim for exemption from taxation I could not be unmindful of the rule frequently laid down by the courts in forcible language, that such a claim must be clearly established, and cannot be sustained by doubtful or uncertain implications. The claimants must point to some contract, clearly giving it in plain and unambiguous language, showing the unmistakable intention of the parties. All doubts upon the question must be resolved in favor of the right of taxation. (People *ex rel.* M. F. Ins. Company *v.* The Commissioners, 76 N. Y., 64; People *ex rel.*, etc., *v.* Davenport, 91 N. Y., 574; Covington & Lexington Turnpike Co. *v.* Sandford, 106 U. S., 578; Wells *v.* Savannah, 181 U. S., 539.)

My conclusion, therefore, is that the assessment and taxation authorized under the act of 1899 upon the special franchises therein described do not impair the obligation of contracts.

711 *Special Franchise Tax Cases.*

Impracticability of the act.

EARL, *Referee:*

In this opinion I will deal with the contention of the relators that the act is impracticable and therefore a nullity. The contention is stated in these words: "A special franchise has no ascertainable value beyond the value of the tangible property in connection with it. The right to use the streets cannot be valued. Its value cannot be separated from the value of other property and rights. Hence the act which requires a State board to value each special franchise requires an impossibility and cannot be executed."

If the contention that the act is impossible of execution be well founded, then no authority is needed to show that it cannot have operation, and yet these authorities may be cited to that effect. (Black on Statutes, 99; People *ex rel.* N. Y. C. & H. R. R. Co. *v.* Morgan, 168 N. Y., 1; Hughes case, 1 Bland [Maryland], 46; Ward

v. Ward, 37 Texas, 389; Chaffee's Appeal, 56 Mich., 244; State *v.* Partlow, 91 N. C., 550; Drake *v.* Drake, 4 Dev., 110.)

The argument made in favor of this contention was very able and forcible, and yet it has not convinced me. The law commands these officers to value these franchises for the purpose of taxation, and it lays down no rules or methods to guide them in the discharge of their duties. It constitutes the special franchises real estate,
712 and they are left to ascertain the value of such real estate, using all the rules and means of information which local assessors may call to their aid in valuing other real estate. They are not required to resort to what in legal proceedings would be called legal evidence. They may act upon hearsay, they may take the judgment of others, they may consult experts and resort to all the tests and information which they think will aid them in reaching the value with sufficient accuracy for the purpose of taxation; and they certainly can resort to all the means and evidence for the guidance of their judgment which private persons might use to reach the values of similar property in which they propose to invest their money. They may consider the cost of reproduction, the amount of business, the earning capacity, the location of the franchise, and all its advantages, and all the probabilities and possibilities relating to it, present and future. No matter what methods the assessing officers use to reach values in making their assessments the taxpayer has no grievance unless his property has been overvalued; and for such a grievance he has his remedy by review before the assessors and a further review in the courts by writ of *certiorari* where, in an orderly legal proceeding in which he and his witnesses can be sworn, the whole matter may be again investigated. It is hard to conceive that under such a system the value of any species of property having value cannot be reached with sufficient accuracy for the purpose of taxation. The law does not attempt the impossible. We know how bungling and imperfect the work of assessors frequently is. They are frequently ignorant and incompetent and know very little or nothing as to the value of much of the property which
713 they are bound to assess; and as to much property they can get very little accurate information for their guidance and can do little more than guess its value. But for all these imperfections alone their work cannot be condemned. If the result of their labors, even by mere chance, is a true valuation or an undervaluation, the taxpayer has no grievance; and if there be an overvaluation, he has the remedies above mentioned.

Here these officers, conceded to be skilful, competent and honest, had whatever information they could obtain from their inspection or general knowledge of the property, and all the facts contained in the reports made to them upon their demand by these corporations, such as their chartered rights and liabilities, their gross earnings and expenses, the character, nature and value of all their tangible assets, the location and extent of their franchises, and the length of their lines and the nature of their use, the amount of their debts

and their earning capacity as demonstrated by actual use. Besides all this they had, when they fixed their final valuations, such information as the corporations could give them at the time of the review before them. In the case of any of these corporations the tangible property is worth only the cost of reproduction, and what is left after deducting such cost must be mainly attributed to its intangible street franchises. Suppose assessors are bound to assess a manufacturing establishment operated by water power and they are commanded to put separate values upon the tangible property, consisting of buildings and machinery, and upon the water power. After they have ascertained the value of the entire property, using
714 all the means to which they may resort, and then have valued the tangible property at the cost of reproduction and have deducted that from the total value, may they not then take the balance as the value of the water power?

But other complications not yet noticed are alleged by the relators which are claimed, with considerable force, to render these franchises peculiarly impossible of valuation, and I will now allude to them, so far as I deem it important, in the further illustration of my views.

There were two kinds of property to be valued, the intangible franchise granted in the streets and the tangible property in, under, over, on or through the streets used in connection with such franchises; and the two kinds together were denominated in the statute a "special franchise," and were required to be assessed and taxed together as a whole. It is not claimed that there is any serious difficulty in assessing the tangible property. But the claim is that it is impossible to assess the intangible franchises.

The principal claim of the relators, as I understand it, is that any franchise granted to any of these corporations is so bound up with other matters contributing to the value of its use that its assessable value cannot be ascertained; and they mention the franchise to be a corporation. Such a franchise has very little cash value. (Detroit Citizens' Street Railway Co. *v.* Common Council, 85 N. W. Rep., 96.) The supply of these under general laws is unlimited. Any sufficient number of persons can organize any one of these corporations and thus potentially obtain all the corporate rights belonging under general laws to such a corporation—right to corporate existence, right to conduct the corporate business, right to consolidate
715 and to contract with other corporations, and all other rights, privileges and franchises which belong to the corporation as such under the laws. All these franchises and privileges are of little cash value, as they may be obtained *ad libitum* at small cost by the payment of the organization tax and the expense of drafting and filing the articles of incorporation. Hence they can play a very unimportant part in valuing these street franchises. They can have value only when the corporations have obtained rights in the streets for the exercise of their corporate powers; and in valuing all the property of such corporations such value is so unimportant that the law would not take much account of it. Of course, the State

can arbitrarily tax the franchise to be a corporation by special methods. But when an inquiry is set on foot as to the real value of such a franchise merely as such, it must be found to have but little more cash value, beyond the cost of incorporation, than the air we breathe.

It is said that the value of these franchises depends very much upon skill in their management; and as such skill cannot be valued and cannot be eliminated in the valuation of the franchises, there is great difficulty in estimating their value, as they would have little value but for skill in their management. But it is possible to obtain skill by the payment of salaries which enter into the expense of management. Such property must not be valued at what it is worth under bad management, but it may be valued at what it is worth under good management. These properties must be taken for assessment for what they are, with all their capabilities and possibilities under such management as can ordinarily be obtained. A person buying one of these franchises would con-
716 sider, in fixing his price, not what it was capable of producing under poor management, but under good management. Its actual earning power, its capabilities, fix its value. It is not the use to which one of these franchises is actually put that is the sole test of its value, but the uses to which it may be put may be considered. Must a farm or any other piece of real estate be estimated for assessment for what it is worth under poor management, or at what it is worth under at least fairly good management? The assessors in assessing such property must assume at least ordinary skill in its management. The producing capacity of a farm by the application of proper skill is the fair measure of its real value and generally measures its salable value.

It is further said that the value of the use of these properties depends absolutely upon capital furnished for their operation and upon structures outside of the street. But all these things can easily be procured *ad libitum* and their cost can be ascertained. But these street franchises are generally actual monopolies. Usually they cannot be duplicated. There cannot be two railways with double tracks in the same street. At any rate, all these franchises while they exist in any street without any competition therein are valuable properties. Assessors in valuing such property must take it as they find it with all its advantages, probabilities and possibilities and everything that adds value to it. They can eliminate all other property which is capable of unlimited reproduction from their consideration and thus find with sufficient accuracy for taxation its value. They can know how the franchises have been used and how they are used and the uses to which they may be put, and hence they can value them with as much accuracy as they can
717 much other property which assessors are bound to assess.

Then again it is said that good-will enters into the value of the use of these properties and that that cannot be taxed in any case as part of the special franchise. There is no good-will here pertaining to persons. If there is any good-will, it pertains to the property,

and hence adds to its value. A grist mill or saw mill situated in a place where there must be numerous patrons is valuable on that account, and the circumstance of its location with this so-called good-will would always be taken into account in fixing its value for any purpose. It matters not that some of these corporations have contracts with their customers which are valuable and conduce to their profits. Such contracts are due to the fact that they have franchises in the streets, without which they could not make the contracts. They are natural advantages of the franchises, like the voluntary patronage of customers who are obliged to avail themselves of their use, and they add to their value and may be considered in their assessment. Such contracts tend to show what can be done with the franchises.

So these officers were bound to take into consideration in assessing these franchises their location and advantages for business uses and their natural patronage and earning capacity. Suppose assessors find in the hands of some taxpayer bonds of some corporation which are not listed on the stock market of New York and which have not been much dealt in so as to establish a market price for them. Their value may depend upon skill in management, upon capital, upon good-will and all the contingencies which attend the
718 franchises of the corporation. Can they in no way be valued for taxation? Their value *must* be ascertained by considering all the circumstances surrounding the corporation and affecting its ability to pay the interest and principal of the bonds when due.

It is quite true that large values have been added to some of these franchises by consolidations, lateral connections, terminal facilities and other matters growing out of present conditions. But whatever has enhanced their values, from whatever sources such values may come, it is their present value in the streets which must be assessed for the purpose of taxation. It is not franchises in the abstract, in the air, so to speak, that are to be assessed, but it is their present capacity to earn money for which all such franchises are owned and managed that constitutes their real value.

I do not think it is any more impracticable for these officers to value these franchises than it is for a jury to value the life of a person in an action to recover a death claim. How is it possible in most cases to measure with any degree of accuracy the value of a human life? The pecuniary value of the life to the next of kin is the measure. The life might turn out to be long or short, prosperous or disastrous, efficient or inefficient, and yet the jury, considering all the circumstances, must determine such value as well as they can without any guide laid down in the law. Their verdict in any case may be, and in most cases must necessarily be, a mere guess, and yet, unless they shoot wide of the mark, it will be upheld.

If these franchises cannot be valued for purposes of taxation, then they cannot be valued in any way for any purpose, and on that account they could never be taken in condemnation pro-
719 ceedings. If any municipality of this State should judge it to be good policy to take any of these franchises, in many

cases unwisely granted, for municipal use and operation, the doctrine of these relators, if sound, would forever stand in the way. The municipalities could not take them without paying their value ascertained in condemnation proceedings; and as that value could not be ascertained, it could not acquire them; and yet such franchises have been acquired by municipalities in this State, notably by the city of Syracuse, which acquired the franchises of a water company by condemnation proceedings.

My conclusion, therefore, is that there is no impossibility to assess these franchises with the reasonable accuracy expected or usual in assessing other kinds of property and in reaching other values, and I find no authority in conflict with this conclusion. In The People *ex rel.* U. V. Copper Co. *v.* Feitner (54 App. Div., 217), Judge Rumsey said: "By the express terms of the statute a party can only maintain a certiorari to review an assessment when it has been aggrieved by it. The theory upon which the assessment is made is of no importance. The only question to be examined in a case like this is whether the relator can be said to be aggrieved because the amount of the assessment is too large." In The People *ex rel.* Subway Co. *v.* Barker (7 App. Div., 27), it was said that the action of the tax commissioners in assessing the capital of a corporation "must be based upon facts and evidence before them and must not be capricious, arbitrary or fanciful." This was said in a case where the corporation had placed facts and evidence before the commissioners which were admitted to be true and from which they could ascertain the value of its capital. The language quoted, standing
720 alone and literally construed, does not state the law accurately.

No matter by what methods the assessors reach their conclusion, if the assessment is not too high there is no grievance. Suppose "by capricious, arbitrary or fanciful methods" they assess property at $10,000 which is worth $20,000, is the taxpayer aggrieved? In People *ex rel.* etc., *v.* Barker (48 N. Y., 70), Judge Hunt, speaking of the duty of assessors in assessing property, said: "They form their own judgment of the value of each piece of real estate and place it in the third column of their assessment roll. This judgment they form from the best information in their power derived from their own knowledge and experience and from such communications as they may confide in." In People *ex rel.* Powers *v.* Kalbfleisch (25 App. Div., 432), it was held that in assessing for the purpose of taxation a very valuable building which cannot be said to have a market value, its earning capacity can be considered. To show how uncertain the estimates of the value of even tangible property may be, the witnesses in that case upon the trial before the referee varied in their estimates as to the value of the land upon which the buildings stood from $233,000 to $650,000, and as to the present cost of erecting the building from $400,000 to nearly $900,000. In The People *ex rel.*, etc., *v.* Coleman (107 N. Y., 541), a case where the assessors were required to assess the capital stock of a corporation, it was held: "The law does not prescribe how the actual value of the capital stock of a corporation is to be ascertained. That is

left to the judgment of the assessors, and in appraising the actual value they have a right to resort to all the tests and measures of value which men ordinarily adopt for business purposes in estimating and measuring the values of
721 property. They may take into account the business of the corporation, its property, the value of its actual assets, the amount and nature of its present and contingent liabilities, the amount of its dividends and the market value of its shares of stock in the hands of individuals." The People *ex rel.* U. T. Co. *v.* Coleman (126 N. Y., 433) is authority for holding that where there is no definite measure for valuing a franchise and the precise value is unknown, the value of the share stock and the general condition of the company may be considered, and in such a case the assessors have a right to resort to all the tests and measures of value which men ordinarily adopt for business purposes in estimating and measuring values of property. They may take into account the business, its property, the amount of its dividends and the market value of its shares of stock in the hands of individuals. In The People *ex rel.* The Edison Electric Illuminating Co. *v.* Barker (139 N. Y., 55), a case involving the assessment of capital stock, Judge Peckham, speaking of a case where sufficient facts were disclosed from which the value of the capital stock could be accurately ascertained, said:

"Under such circumstances and for this purpose of assessment the market price of the shares of the stock into which the capital is divided is not material, nor the amount of the dividends which may have been paid by the company. These are not the subject of taxation under the law relating to the assessment of corporations, and such facts are immaterial when the exact data are given from which the value of the capital can be accurately ascertained. In the absence of these exact data the facts thus stated, as well as others, may be looked at for the purpose of obtaining from them,
722 as well as the nature of the facts will permit, what is the value of the capital and surplus, if any there be." Yet the earning of dividends depends largely upon skill in management and upon good-will. In People *ex rel.* The Equitable Gas Co. *v.* Barker (144 N. Y., 94) dividends and earning capacity were considered in valuing corporate property for taxation. In People *ex rel.* M. R. Co. *v.* Barker (146 N. Y., 304) it was held that in making an assessment upon the capital stock of a corporation under the act, chapter 456 of the Laws of 1857, the earnings of the corporation may be considered by the assessors and that when it appeared that its earnings enabled it to pay its running expenses, necessary repairs and interest on its indebtedness and to declare a dividend of six per cent. and still have a surplus, it was proper to assume that its capital stock remains unimpaired and that there are surplus assets sufficient to pay its outstanding indebtedness. There, again, were involved the incidents of skill in management and good-will. In State Railroad Tax Cases (92 U. S., 575) the assessments there in question were required to be on the capital stock of corporations according to the fair cash value of such capital stock, including the

franchise over and above the assessed value of the tangible property of the corporation, and there it was held: "that the capital stock, franchises and all the real estate and personal property of corporations are justly liable to taxation, and a rule which ascertains the value of all this by ascertaining the cash value of the funded debt, and of the shares of the capital stock as the basis of assessment, is probably as fair as any other. Deducting from this the assessed value of all the tangible real and personal property, which is also taxed, leaves the real value of the capital stock and fran-
723 chise subject to taxation as justly as any other mode, all modes being more or less imperfect." There also were present as factors bearing upon values skill in management and goodwill.

I repeat, these assessors were not bound to view these franchises as abstractions apart from any use to which they could be put. But they had the right to consider, and as faithful officers were bound to consider, the uses for which they were intended in the streets, and to which they had been actually applied. Suppose what constitutes the special franchise of any one of these corporations should be put in the market for sale? Can it be doubted that it would sell for a substantial price, a sum which business men could determine with sufficient accuracy for business purposes? Hence, I think it is clear that these special franchises could be assessed for the purposes of taxation. The assessment is undoubtedly attended with great difficulties. But it can be made with such an approximation to accuracy as will satisfy all the requirements of the law and of the constitution. These officers could place some value upon them, and whether there was any over-valuation will be considered later.

Objections not before considered.

EARL, *Referee:*

In this opinion I will deal with general objections to these assessments, not considered in prior opinions.

1. Most of these relators had, under the laws of this State, prior to these assessments, acquired by consolidations the street franchises of other corporations, and although they thus became the owners of such franchises, they now claim that under the special franchise tax act such franchises should have been separately assessed and not as one franchise, in the ownership of the corporation thus acquiring them; and that, therefore, the assessments in all such cases are illegal.

A special franchise is defined in the statute (chapter 712, Laws of 1899) to be a "franchise, right, authority or permission," to use "streets, highways or public places," for the purposes mentioned in the act, and it is deemed to include the value of the tangible property in any street, highway or public place, used in connection with the franchise.

The State Board of Tax Commissioners is commanded annually to "fix and determine the valuation of each special franchise subject to assessment, in each city, town, village or district," and to "file with the clerk of such city, town or village a written statement of the valuation of each special franchise in such city, town or village or tax district, as fixed and determined
725 by such board;" and "each city, town or village clerk" is commanded to deliver a copy of such statement to local assessors "in each tax district."

Then it is further provided that the owners of these taxable franchises shall make a report to the tax commissioners "containing a full description of every special franchise" possessed or enjoyed by them, "a copy of the special law, grant, ordinance or contract under which the same is held, or, if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

This act should be so construed, if possible, as to make it practicable and operative, and to give effect to the legislative intention. If each special franchise, when there are several belonging to any one of these relators, must be separately assessed, then the difficulties attending the execution of the act are vastly increased, if not insuperable.

I think by the language used it is the plain purpose of the act to secure the assessment of "each" and "every" franchise—all the franchises. If it had been the intention that every franchise as granted should be separately assessed, a matter of so much practical importance would have been made plain by the use of the appropriate word "separately." There is nothing in the nature of assessments or of property which requires that all separate pieces of property shall be separately assessed. All the personal property of an owner, however multifarious, is grouped together and valued as a whole, and so there is no general provision in the tax laws of the State which requires separate parcels of land, owned by the same person, to be always separately assessed. A farmer may
726 own (not a very unusual circumstance) a wood lot or a pasture lot, near his main farm, and used therewith, and it cannot be doubted that such lot may be legally assessed with the farm as part thereof.

A corporation owning a franchise becomes the owner of other franchises by consolidation, and thus enlarges the franchise which it previously owned—just as a farmer may buy other lands adjoining his farm and thus enlarge his farm—all the lands becoming assessable as one body of land. These franchises, after the consolidations, belonging to one corporation, were used and managed together as one piece of property. They were in no way kept distinct. There was nothing in the streets to distinguish one from another. There was no separation of their earnings in separate accounts, and such earnings all went into the same treasury as common funds. The tangible property in the streets of all these franchises so combined

in one ownership had previously to this act been assessed as one piece of property; and this fact, together with the manner of the use and management of the property, must have been known to the lawmakers when this law was enacted.

The fact that the separate franchises thus combined may have different conditions attached to them, and have upon them separate mortgages and other burdens, does not render their taxation as one property impracticable; and any inconvenience expected to flow from such taxation is more imaginary than real. Several adjoining farms, with different conditions, mortgages and other burdens affecting them, may be combined and taxed as a whole, and so may adjoining city lots, and no inconvenience or embarrassment of any kind follow, as no inconvenience or embarrassment ever did
727 follow, so far as I am informed, from the taxation as real estate of the tangible property of these corporations in the streets as a whole.

But for the purpose of making this act practicable, I think a still broader view may be taken. After these consolidations were effected, and ownership of several franchises became thereby vested in one corporation, such corporation had "right, authority and permission," under the laws, to use and operate as owner all these franchises in the streets together as a whole, and it did so use and operate them, and no power could prevent it. Such "right, authority and permission" came within the definition of a special franchise which was required to be assessed.

It may be conceded that under the general laws of the State, as it has always been understood and practiced, separate, detached pieces of land owned by the same person and separately used and occupied must be separately assessed. This rule applies to land having a visible *situs* and boundary. But the rule is not, I think, applicable to real estate such as these franchises, which have no circumscribed *situs* and are used and managed in common as parts of one system.

There is no special provision of law applicable to the city of New York which requires franchises owned, used and managed together by one corporation to be separately assessed for purposes of taxation. The only provision I find in the city charter is in section 889, which makes it the duty of the deputy tax commissioners to assess all the taxable property in the several districts, and to furnish to the board of taxes and assessments "a detailed statement of all such property, showing that said deputies have personally examined each and every house, building, lot, pier or other assessable property,
728 giving the street, lot, ward, house and map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known." This section is not applicable to assessments made by these State officers. If it were, it would not require them to assess separately these franchises owned, used and managed together as a whole, and having no circumscribed *situs*, no lot number, and laid down on no tax map; and under this section the tangible property in the streets, used with these fran-

chises before the passage of this act and assessable as real estate, were never separately assessed.

In the case of May *v.* Traphagen (139 N. Y., 478), to which my attention has been called, the Brooklyn city charter required the local assessors to make ward maps, designating thereon, for the purpose of assessment, city lots by their numbers, and the assessments were required to refer and conform to such maps. In making the assessment there in question, the assessors assessed two lots as one, instead of assessing the two separately by their map numbers, as required by the law, and the assessment was held illegal. That case has no bearing upon the question I am now considering. In People *ex rel.* Lazarus *v.* Feitner (65 App. Div., 318) six lots situated in the city of New York, belonging to different persons and designated separately upon the tax map of the city by separate numbers, were covered entirely by a single building, occupied by one individual, and as it was impracticable to apportion the value of the building among the various lots upon which it stood, it was held that the six lots could be assessed in bulk. That case is some authority for the contention of the defendants that where several
729 franchises are owned by one corporation under one control, combined into one system and operated together, and it is impracticable to assess them separately, they may be assessed in bulk.

2. It is said that these State officers did not adopt any rule or method in making these assessments, and that therefore they should be set aside. There is no law or authority which requires assessors, in making assessments, to adopt any certain or fixed rule or method. The only rule for their guidance is the actual value of property to be assessed, and they may avail themselves of all tests of such value within their reach, and of every fact, and all information which in their judgment has any bearing upon such value. If, in assessing these franchises, these officers included with them the value of any other property, thus enhancing their value, their assessments would be illegal. This I do not understand they did. I cannot find that they assessed any values but the special franchises, but in assessing them they considered several incidental matters, such as earning capacity, business advantages, etc., all bearing upon their value. If the local assessors throughout the State are bound to adopt some certain rule or method in reaching assessable values, and if their assessments must fail unless, when questioned, they can state some certain rule or method by which they were guided, I believe a large share of their assessments would fail to withstand the assaults of the taxpayers. All that such assessors could say when questioned is substantially what these officers have said here, that they availed themselves of such information as
730 they could obtain as to values, and then fixed them according to their best judgment. Assessments when thus made are not illegal. They may be too high, and for that the remedy is by review. It is only when undisputed facts are before the assessors, and by adopting some wrong rule or method they disregarded such facts and thus

enhanced their assessments, or when, by adopting a wrong rule or method, they included in their assessments some element of value not belonging there, that the courts have condemned assessments for the use of an improper rule or method. (People *ex rel.* The Manhattan Railway Co. *v.* Barker, 48 App. Div., 248; People *ex rel.* Union Trust Co. *v.* Coleman, 126 N. Y., 195; People *ex rel.* Edison Electric Illuminating Co. *v.* Barker, 139 N. Y., 55; People *ex rel.* Edison Gen'l Electrical Co. *v.* Barker, 141 N. Y., 251; People *ex rel.* Manhattan Railway Co. *v.* Barker, 146 N. Y., 304; People *ex rel.* Manhattan Railway Co. *v.* Barker, 152 N. Y., 417; People *ex rel.* etc., *v.* Dederick, 161 N. Y., 195.)

Here the same rule was adopted by these officers in all cases, to wit: To use all the tests of values, and all the facts and information bearing upon values, and then to fix the fair values of the franchises, including no other property, using their best judgment, and no decision condemns such an assessment. The judgment thus exercised is the same kind of judgment which local assessors generally exercise. In many cases it must be little better than a conjecture or guess, like the verdict of a jury in an action upon a death claim and in other cases, or the judgment of a large proportion of men who deal in stocks and securities in Wall street and in other large business transactions, and the only remedy of the aggrieved taxpayer is by review. A precise rule or method,
731 an infallible or accurate judgment, in such matters is impossible.

3. It is said that these assessments are illegal because no proper hearing was given to the relators at the time of review before these officers. The complaint is that they did not inform the relators upon what "basis, theory, rule or principle" they proceeded in making the assessments, and what was in any case the value separately of the tangible property and of the street franchises which were required to be assessed together. I know of no rule that requires assessors, on grievance day, to give an aggrieved taxpayer any information except what appears in the assessment roll. The taxpayer knows of the assessment and its amount, and he is present before the assessors to show that his assessment is illegal, or too high, and he has the burden as to both of these, and to establish his claim he has no legal right to catechise the assessors or ask their aid. If he has any grievance he is supposed to know what it is, and to be able to place, by his own oath or the evidence of witnesses, the necessary facts before the assessors. A party seeking before any judge in any way to review or overhaul his decision, has no legal right to question him as to the methods and rules used in reaching his decision, and yet he could have a hearing and would not be deprived of due process of law.

4. The objection that the relators did not have due process of law in the taxation of their property is without foundation. They had notice of the assessments and a hearing on grievance day, and opportunity to produce all their evidence before the commis-
732 sioners; and they have a further hearing upon the whole case in these proceedings now pending before me, and all this

within the most stringent rules to be found in any authority, constitutes, for such a case, due process of law (Stewart *v.* Palmer, 74 N. Y. 183). And they have also had the equal protection of the laws within the meaning of the 14th amendment of the Constitution.

5. The act we are now considering is simply an amendment of the general tax law. It imposes no tax and appropriates or applies no money to any object, and therefore does not violate section 24 of article 3 of the constitution, which requires that "every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied." (In matter of McPherson, 104 N. Y., 306; Jones *v.* Chamberlain, 109 N. Y., 100.) If this objection could avail I do not see why it would not condemn the whole chapter of laws of which the special franchise tax is simply an amendment.

My conclusion, therefore, is that there is nothing in these general objections, so far considered, showing the illegality or invalidity of these assessments.

6. These franchises were all assessed at what these officers deemed to be their full and true value, while other real estate in the municipalities in which these franchises are operated was assessed by the local assessors at less than its full and true value, and so these assessments will have to be reduced at least so much as will equalize them with the other assessments in the same localities. In New York the assessment of other real estate was sixty-seven per cent. of its full and true value; in Kings, sixty-eight per cent.; in Queens, eighty per cent.; in Richmond, sixty-six per cent., and in Westchester, ninety per cent.

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If I find that these officers have in any cases assessed franchises at more than their full and true value, my conclusions as to such assessments will be found in my opinions and findings in such cases.

Stipulation as to Findings and Exceptions to Referee's Refusals to Find.

It is hereby *stipulated* that proposed findings of fact and conclusions of law were submitted by the relator to the referee prior to the making of his report, identical in form with those submitted to the court and hereinafter printed at pages 739 to 771 hereof, the same being relator's proposed findings of fact Nos. 1 to 81, and conclusions of law Nos. 1 to 59, all inclusive; also that the referee refused to find said proposed findings of fact and conclusions of law as submitted, except as found in his report printed at pages 660 to 670 hereof, and that exceptions were duly filed to the referee's refusals to find, identical in form and number with those filed to the court's refusal to find, hereinafter printed at page 787, the same being enumerated and specified in relator's exceptions numbered as paragraphs "8" and "9."

734 (*Exceptions to Referee's Report.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSS-town Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS.	Exceptions to Referee's Report. Assessment of 1900. No. 15.

The relator herein, saving and reserving all objections to the manner and form of the findings of fact and conclusions of law of the referee herein not herein precisely and exactly specified, files the following exceptions to the same:

(1.) The relator specifically excepts to the referee's 22d finding of fact and to each and every part thereof, and without limiting this exception further specifically excepts to so much of said 22d finding as finds that the respondents considered the market value of the relator's stocks and bonds for what it might be worth and not as conclusive, or as an absolute measure of valuation, further specifically excepts to so much of said 22d finding as finds that the respondents in assessing the special franchise of the relator, and in ariving at the valuation thereof, did not include in such assessment the valuation of any property except as is in, above, upon, under or running through the public streets and public places of said city, including the franchises, rights, authority or permission to construct, operate and maintain its foun-
735 dation, roadbed, substructure and superstructure, with their appliances in, upon, above, under or through said streets and public places; and further specifically excepts to so much of said 22d finding as finds that the respondents did not include in such assessment or valuation the value of the right to be or the franchise to be a corporation; and further specifically excepts to so much of said 22d finding as finds that the respondents did not include the value of the good will of the business carried on by such corporation, nor did the respondents include the value of any property other than that stated and described in said 22d finding as having been included by them, and further specifically excepts to so much of said 22d finding as finds that such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or the right to use such public streets and public places which the respondents were able to ascertain.

(2.) The relator specifically excepts to the referee's 24th finding of fact, and to each and every part thereof; and further specifically excepts to so much of said 24th finding as finds "that the actual

and true value of the special franchise of the relator as finally determined by the defendants, and as I find, is $585,693;" and further specifically excepts to so much of said 24th finding as finds that "no evidence was given before me to show that it is less," both as a finding of fact and as an implied conclusion of law, and relator specifically excepts to such implied conclusion of law as found by the referee, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

736 (3.) The relator specifically excepts to the referee's 25th finding of fact, and specifically to so much of said 25th finding that finds or implies that the value of the relator's special franchises is $585,693, and that the sum to be deducted is $193,278.69, and that $392,414.31 is the value of the relator's special franchises for the purpose of assessment and taxation under the special franchise tax act. The relator, however, does not except to so much of said 25th finding as finds or implies that other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and that to equalize the relator's assessment with the assessment of such other real estate a deduction of 33 per cent. should be made from the actual value.

(4.) The relator specifically excepts to the 1st conclusion of law as found by the referee, and as to the whole thereof as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(5.) The relator specifically excepts to the 2d conclusion of law as found by the referee, and as to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(6.) The relator specifically excepts to the 3d conclusion of law as found by the referee, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(7.) The relator specifically excepts to the 4th conclusion of law as found by the referee as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence, except to so much thereof as finds or implies that the relator is entitled to a deduction from the actual value of its special fran-

737 chise for the purpose of equalizing its assessment with the assessment of other real property in the city of New York.

Dated New York, July 7, 1902.

GEORGE S. BIXBY,
Attorney for Relator, 71 Broadway, Borough of Manhattan, City of N. Y.

To John Franey, Esq., county clerk.
To Hon. John C. Davies, attorney-general, attorney for respondents.

738 (*Notice of Trial.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS.	Notice of Trial. Assessment of 1900. No. 15.

SIR: Please take notice, that upon the report of Hon. Robert Earl, the referee herein, and upon the petition, writ of certiorari, return, the evidence and proceedings before the referee, and all the papers and proceedings herein; we shall move before this honorable court at a special term thereof, to be held at the county court house, in Albany county, on the 15th day of July, 1902, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, that the court proceed to hear, try and determine this proceeding; and you will

Further please take notice, that we shall then and there bring on this proceeding to a hearing and trial, and shall move for a final order confirming the assessment made herein on or about the 30th day of April, 1900, and for such other or further relief or both, as to this court may seem to be just and proper in the premises.

Dated July 7, 1902.

JOHN C. DAVIES,
Attorney-General, Attorney for Respondents, Albany, New York.

To George S. Bixby, Esq., attorney for relator.

739 (*Proposed Findings.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS, Respondents.	Assessment of 1900. No. 15.

Plaintiff's proposed findings of fact and conclusions of law.

The Central Crosstown Railroad Company, the relator in the above-entitled proceeding, hereby proposes the following as findings of fact and conclusions of law to be made by the special term of this court herein.

Findings of Fact.

(1.) At the times hereinafter mentioned, The Central Crosstown Railroad Company (hereinafter also called the relator) was, and still is, a street railroad corporation created and existing under and pursuant to the laws of the State of New York, and has its principal office in the city of New York.

740 (2.) The several streets, avenues and public places, on which the above named corporation has constructed and is engaged in operating street surface railroads, are set forth and enumerated in Exhibit 1.

(3.) The rights, privileges and franchise granted to the relator or its predecessors in title, to construct and operate a street railroad, together with all exemptions and immunities to which the original grantees of the said rights, privileges and franchise became or were entitled, are now vested in the relator, The Central Crosstown Railroad Company.

(4.) The right and privilege to construct and operate a street railroad, which is owned by the relator, and the railroad which the relator had constructed upon the streets where it possessed such right, constituted a special franchise as the same is defined in the tax law of this State.

(5.) A map of the borough of Manhattan in the city of New York, was put in evidence by the relator as Exhibit 1, upon which is correctly delineated the several special franchises which were, on the second Monday, that is the 8th day of January, 1900, and are now owned, and leased by the relator, and which map is hereby found to be correct and to contain a correct delineation of said franchises and is made a part of this finding.

(6.) On January 8th, 1900, the special franchise owned by the relator company consisted of one separately granted special franchise.

(7.) On January 8th, 1900, the relator was also the lessee of one special franchise, which was owned by the Christopher and Tenth Street Railroad Company.

741 (8.) The special franchises so owned and leased by the relator, were operated by the relator under and as one system. Such special franchises were operated by horse power.

(9.) Prior to January 8th, 1900, the relator had executed and delivered to the American Loan and Trust Company as trustee, a mortgage to secure the payment of its bonds amounting to the sum of $250,000, which said mortgage conveyed to said trustee the special franchise and the real estate and personal property owned by the relator. All of the bonds secured by said mortgage, amounting to $250,000, had prior to January 8, 1900, been issued for cash and were outstanding and unpaid at that date.

(10.) On the 30th day of October, 1899, the relator filed with the State Board of Tax Commissioners (hereinafter also referred to as

the State board) a report for the year ending June 30, 1899, verified on the 27th day of October, 1899, by a proper officer, and thereafter filed one supplemental report on January 3rd, 1900, verified on the 29th day of December, 1899; such reports being filed upon the request of the State board and being made pursuant to chapter 712 of the Laws of 1899, and containing the information requested by the State board and being in conformity with blanks prepared and furnished by them.

(11.) These reports of the relator contained a full description of the special franchise possessed and enjoyed by it, together with copies of special laws, grants and contracts and a reference to general laws, under which the relator's special franchise was held and enjoyed, and a statement of all conditions, obligations, or burdens, imposed upon such special franchise and under which the
742 same was enjoyed by the relator, together with all other information relating to the value of such special franchise required by the State board.

(12.) In such report and supplemental report, the relator reported to the State board the tangible property connected with its special franchise, consisting of railroad structures, sub-structures, tracks, and the iron work thereof, and the other fixtures permitted and authorized to be made, laid, or placed, in, upon, above, or under the streets, highways and public places, and the value thereof based upon the cost of reproducing the same.

(13.) The information asked for by the State board, and furnished in the aforementioned reports, so far as it concerned the earnings of the relator or the statistics relating to the construction of the surface railways or to the cost of reconstruction, covers operations of the company for the year ending June 30, 1899.

(14.) The blank forms so supplied by the State board to the relator, and which were returned duly filled out by the relator to the State board, specified all the information requested by the State board to enable it to make its assessment.

(15.) These forms of reports, as contained in the testimony and marked Plaintiff's Exhibits 66*a*, 66*b* and 66*c*, are made a part of this finding as correct copies of the forms aforesaid.

(16.) Thereafter and on or about the 20th day of March, 1900, the State Board of Tax Commissioners, claiming to act under and pursuant to chapter 712 of the Laws of 1899, proceeded to fix and determine the valuation of the special franchise of the relator company at the sum of $1,197,020, and did thereupon make the
743 assessment of such special franchise at the sum aforesaid.

(17.) Immediately after making the assessment, the State board gave to the relator company a notice in writing stating in substance that such assessment had been made, and that the total valuation of the relator's special franchise was $1,197,020, and that the State board would meet at its office in the city of Albany on the 10th day of April, 1900, at 10 o'clock a. m., to hear and determine any complaint concerning such assessment.

(18.) The relator company, by its counsel, appeared, pursuant to such notice, at the time and place therein stated, before the State board, and requested to be informed by the board concerning, and as to what was, the amount which said board had determined to be the valuation of the tangible property of the relator company, and as to what was the amount fixed and determined by the board to be the valuation of the intangible franchise, right and permission of the relator company; and as to what was the method, rule or principle, if any, adopted and applied in ascertaining and determining the valuation; but the board refused to give the relator company the whole or any part of the information so requested.

(19.) The State board refused to inform the relator what was the valuation fixed and determined by it of the tangible property included in the relator's special franchise, or what was the method, rule or principle adopted by the State board in fixing and determining the valuation of the relator's franchise, right and permission to construct and maintain its railway upon the various streets, avenues, highways and public places hereinbefore referred to.

(20.) The relator asked the State board and the members
744 thereof for, but was refused, the full and fair hearing provided for and contemplated by section 44 of article 2 of the tax law, the statute in such case made and provided.

(21.) The relator company thereupon complained of the assessment, and filed with the State board a written statement under oath specifying the grounds of its complaint.

(22.) In its written complaint, the relator company complained that the assessment was incorrect because illegal, erroneous for overvaluation and unequal, and specified among the grounds of such illegality, overvaluation and inequality, in substance, that the State Board of Tax Commissioners had no jurisdiction, right or authority to make such assessment for the reason that all the provisions of the statute known as chapter 712 of the Laws of 1899 were unconstitutional and void and violated both the Federal and State constitutions; and that the said statue did not prescribe any definite method of valuation and was so vague and indefinite that it could not be administered by the taxing officers or enforced by the courts, and that the statute did not provide any definite rule by which the said State board could value relator's special franchise; that the said State board in making said valuation had not followed or applied any rule, method or principle of valuation; that the relator's special franchise was granted under and pursuant to contracts which exempted the said special franchise from taxation, and that the said assessment impaired the obligations of the contracts by which said special franchise was acquired and is now owned, possessed and operated by the relator company, and violated in this respect the Federal Constitution; and also in that the said State board
745 refused to inform the relator of the separate valuations placed by the State board upon the tangible property and the intangible property connected with the relator's special franchise, and further in that the State board did not give the relator the hearing

to which the relator was entitled under the laws and constitution of the State; that the said assessment was erroneous by reason of overvaluation to the extent of $1,000,000; that the said assessment was unequal in that it was made at a higher proportionate valuation than the assessment of other special franchises of the same character, to wit, franchises to operate street railroads in the city of New York or in the State of New York, and also because made at a higher proportionate valuation than the assessment of other real estate in the city of New York or in the State of New York.

(23.) Thereafter and on or about the 30th day of April, 1900, the State Board of Tax Commissioners, still claiming to act pursuant to chapter 712 of the Laws of 1899, finally determined the valuation of the special franchise of the relator company to be the sum of $585,693, and on or about April 30, 1900, filed with the department of taxes and assessments in the city of New York a written statement of such valuation as finally fixed and determined by the State board, and at or about the same time gave notice to the relator company that such written statement had been filed with the department of taxes and assessments of the city of New York.

(24.) Thereafter the commissioners of taxes and assessments of the city of New York prepared the assessment rolls of the real and personal property of the several parts of the city for the year
746 1900, and entered thereon before the final review or certification of such rolls by them the valuation of such special franchise of the relator company as fixed by the State board, and having annexed thereto their certificate that the assessment rolls were correct in accordance with the entries of the several books or records in that department, duly verified the same, and delivered such assessment rolls to the municipal assembly of New York city, as required by law, on the first Monday of July, 1900.

(25.) Within fifteen days after the final completion and filing of the assessment roll in the city of New York, the relator company applied for and obtained a writ of certiorari to review the assessment, pursuant to which writ this proceeding is pending.

(26.) The State Board of Tax Commissioners did not nor did any of the members of such board verify the valuation of relator's special franchise, as finally fixed and determined by the State board; nor at any time certify to the same under oath as being the true and correct valuation.

(27.) Neither the State board nor any member thereof at any time personally visited the railroads, tracks or superstructure or any of the tangible property connected with the special franchise of the relator, nor personally visited the railroads in operation, to aid them in arriving at a valuation.

(28.) In fixing and determining the valuation of the special franchise of the relator company, no rule, method or principle was followed by the State board.

(29.) The State board was unable to devise or find any
747 general rule, method or principle to adopt in making the various valuations and assessments of the special franchise of

the relator and of the other companies or individuals whose special franchises it assessed.

(30.) The State board was unable to apply any special rule, method or principle whatsoever in making the said assessments or valuations in any particular case.

(31.) In valuing the special franchise of the relator, the State board neither had nor applied any general rule, method or principle of valuation which was applicable to all special franchises to construct, maintain and operate street railroads generally within the State, nor any rule, method or principle which was applicable to the valuation of special franchises to construct maintain and operate street railroads in the city of New York.

(32.) In making such assessment against the relator, the State board fixed upon a certain figure as covering the value of the tangible and intangible property together, and did not separately arrive at a valuation of the tangible and intangible parts respectively.

(33.) The tangible property of the relator company, the value of which was included in the assessment so made by the State board, had for many years previous to such assessment been entirely assessed by the local assessors in the city of New York.

(34.) For the purpose of this proceeding, it has been stipulated by the parties that the value of the tangible property connected with the special franchise of the relator company, based upon its
748 cost of reproduction, was on January 8th, 1900, the sum of $52,980.

(35.) The difference between $52,980 (the amount stipulated for the purpose of this proceeding to be the value of the tangible property connected with the relator's franchise) and the amount of the State board's valuation of the said special franchise, to wit, the sum of $585,693, is $532,713, which, therefore, is the State board's valuation of the special franchise of the relator, exclusive of tangible property connected therewith.

(36.) In assessing the special franchise of the relator company, the State board assessed it as an integral part of a system composed of the relator company and of other street railway companies making up the systems known as the Metropolitan and Central Crosstown systems, considered as one system, and that the valuations so placed upon the special franchises of the component companies of the said systems, and the valuation of the tangible property connected therewith at the amount stipulated to be correct for the purposes of this proceeding, are as follows:

Name of company.	Assessed valuation.	Stipulated value of tangible property.
Metropolitan St. R'y Co.	$18,377,911	$5,651,196
23d St. R. R.	1,979,276	610,346
28th & 29th St. C. T.	350,473	107,150
Fulton St. R. R.	104,530	15,500
34th St. C. T.	783,547	25,000
Bl. St. & Fulton F'y	323,811	154,179
42d St. & G. St. F'y	650,613	103,300
C. P. N. & E. R.	1,954,712	763,844
9th Ave.	1,787,386	754,573
8th Ave.	3,968,256	2,105,440
6th Ave.	3,917,260	1,599,012
2d Ave.	4,057,447	1,486,433
B'way & 7th Ave.	6,319,400	688,811
N. Y. & Harlem	6,405,075	2,433,829
Central C. T.	585,693	52,980
Ch. & 10th St.	726,927	57,000
	$52,292,317	$16,608,593

749 (37.) In valuing the special franchise owned by the relator for the purposes of assessment at the sum of $585,693, the State board considered the market value of the share stock of the relator and the market value of the bonds of the relator as appreciating factors which entered into such valuation.

(38.) In valuing the special franchise owned by the relator for the purposes of assessment as aforesaid, at the sum of $585,693, the State board considered, as appreciating factors of value of the said special franchise (which entered into the final valuation), the market value of the share stock of the relator and the market value of the bonds of the relator secured to be paid by the aforesaid mortgage for $250,000 last above mentioned, and all of which were outstanding and unpaid at the date of such valuation.

(39.) In valuing the special franchise owned by the relator for the purpose of assessment as aforesaid, the State board considered the amounts of the gross and net earnings derived from the operation of the system of railways of the relator as appreciating factors, entering into their valuation.

(40.) In valuing the special franchise owned by the relator for the purpose of the assessment as aforesaid, the State board considered the value of all the assets of the relator as an appreciating factor, entering into their valuation.

(41.) In valuing the special franchise of the relator as aforesaid, the State board considered the value of the corporate assets of the

company as an appreciating factor, entering into their valuation,
and, for that purpose, fixed upon a certain sum as represent-
750 ing the value of the corporate assets of the company.

(42.) In valuing the special franchise owned by the relator for the purposes of assessment as aforesaid, the State board fixed, at a certain sum, in its judgment, the value of the good will of the relator, and considered it as an appreciating factor, entering into their valuation.

(43.) In valuing the special franchise owned by the relator for the purpose of assessment as aforesaid, the State board considered as appreciating factors, entering into their valuation, the rights of the relator to operate cars over the lines owned by other corporations, which lines are operated as part of the same system.

(44.) In valuing the special franchise of the relator for the purposes of assessment, the State board considered as appreciating factors (entering into their final valuation), the earning capacity of the corporation and its business methods, including the right to operate its cars over continuous routes owned by other companies, and the transfer of passengers from one route to another for a single fare.

(45.) The State board in fixing the value of the special franchise owned by the relator on January 8th, 1900, considered as appreciating factors entering into their final valuation, the value of all the assets of the relator; the gross and net earnings which it derived from the operation of its system of railways in the borough of Manhattan, consisting of roads constructed upon the franchise owned by it and also of roads constructed upon a franchise leased by it
from another railroad corporation; the methods of operation
751 of the said system of railways; the right which the relator
possessed to transfer passengers from one line of operation to another, and the right it possessed to run its cars over other special franchises which it leased or controlled; and the right it possessed to create and operate continuous routes of travel by the union of special franchises, some of which it leased and another of which it owned.

(46.) In valuing the special franchise of the relator company, this State board considered, as elements of value, which entered into their final valuation, the value of such special franchise for railroad purposes, and its position with its connections, and also the productive capacity of relator's said system.

(47.) In valuing the special franchise of the relator, said State board took into consideration, as appreciating factors of value, the operation as a whole, of the systems known as the Metropolitan and Central Crosstown systems considered as one railroad system, including the value of the business skill and personal management of such railroad system, of which the special franchise of the relator was considered as an integral part.

(48.) In valuing the special franchise of the relator company, the State board considered it as an integral part of a complete system created for the purpose of realizing pecuniary profit, and included

the value of the business skill and management of such railroad system as appreciating factors entering into their final valuation.

(49.) In valuing the special franchise owned by the relator for the purposes of assessment as aforesaid, the State board took
752 into consideration the tax rate prevailing on real estate in New York county.

(50.) No basis for the determination of the value of the relator's special franchise is afforded by the consideration of the matters (or any of them) above set forth, that is to say: The market value of the share stock of the relator, the market value of the bonds of the relator, the amounts of the gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the good-will of the relator; the rights of the relator to operate cars over lines owned by other corporations; the earning capacity of the relator and its business methods and skill; the methods of operation and the personal management of the relator's system of railways; the right which the relator possessed to transfer passengers from one route or line of operation to another for a single fare; the right which the relator possessed to create and operate a continuous route of travel by the union of two special franchises, one of which it leased and the other of which it owned; the productive capacity of the said system; and the operation of the relator's system of railroads as a whole.

(51.) In valuing, for purposes of assessment as aforesaid, the special franchise owned by the company whose roads *was* leased to the relator, the State board considered the amount of the rental agreed to be paid, as an appreciating factor of value.

(52.) It is impossible to ascertain what part of the market
753 value of the share stock and bonds of the relator represents the value of the special franchise owned by it, and what part represents the value of its leasehold interest in the special franchise which it holds under a lease as aforesaid.

(53.) There was no testimony or data before the State board which enabled it to determine what portion of relator's gross earnings comes from the transportation of passengers over the special franchise owned by the relator.

(54.) The evidence in this proceeding does not furnish data from which can be determined what portion of the gross earnings of the relator comes from the transportation of passengers over the special franchise owned by the relator.

(55.) The evidence in this proceeding shows it is impossible to ascertain and determine what portion of the gross earnings of relator comes from the transportation of passengers over the special franchise owned by the relator.

(56.) Owing to the manner of the operation of said systems known as the Metropolitan and Central Crosstown systems considered as one railroad system, whereby long and continuous routes of travel have been established, in part over franchises one of which is owned

by and one leased by the relator, and in other instances, over franchises not owned or leased by the relator, it cannot be determined what portion of its gross earnings the relator derived from the transportation of passengers over its special franchise.

(57.) The consideration of gross receipts by this State board as an element of value, in determining the valuation of special franchises, involves the including in their valuation of the personal
754 elements of ability, business ingenuity, enterprise, management and financial connections.

(58.) The consideration of any matter or circumstance as an appreciating factor in the State board's valuation of the special franchise of the relator made that valuation, to wit, the valuation complained of in this proceeding, materially larger than it otherwise would have been.

(59.) The annual gross earnings of the relator for the year 1899 were $608,047.96. Such earnings are derived in part from the operation of the relator's system of railroads in the borough of Manhattan, in the city of New York, consisting of the Central Crosstown Railroad Company and its leased line, the Christopher and Tenth Street Railroad Company, and also in part from the transfer of passengers between the relator's said system of roads and the Metropolitan system of railroads in the borough of Manhattan, city of New York.

(60.) The special franchise of the relator company was assessed at the sum of $585,693, which sum the respondents fixed and determined to be the full and true value thereof.

(61.) In the city of New York, no real estate or real property was assessed for the year 1900 at its full value except the special franchises.

(62.) All land, real estate and real property in the city of New York except special franchises were assessed for the year 1900 at a valuation equal to 67 per cent. of their full value.

(63.) The State Board of Tax Commissioners in their official report to the State board of equalization for the year 1900 reported as follows:

"The following table of percentages showing relation of the
755 assessed value to full actual value of 100, and equalization based thereon for the several counties was unanimously adopted * * * New York, percentage, 67."

(64.) The counties comprised in the city of New York; the percentages showing the relation between the assessed value and the full value of real estate in each county for the year 1900; the aggregate amount of such assessed value in each of the aforesaid counties for the year 1900; and the full value of such property on the basis of 100 %, are as follows:

County.	Per cent. of value.	Assessed value.	Full value.
New York	67 %	$2,178,605,905	$3,251,650,604
Kings	68 %	609,822,267	893,826,863
Queens	80 %	103,752,600	129,690,750
Richmond	66 %	40,264,692	61,007,109
		$2,932,445,464	$4,333,175,326

(65.) The total assessed value of the real property in all the counties of the city of New York for the year 1900, (the assessment for which year this certiorari proceeding is brought to review) was two billion nine hundred and thirty-two million four hundred and forty-five thousand four hundred and sixty-four dollars ($2,932,445,464). The total full value of the same property was four billion three hundred and thirty-three million one hundred and seventy-five thousand three hundred and twenty-six dollars ($4,333,175,326). The ratio which the assessed value bears to the actual value, in case of such total valuations, is sixty-seven and six-tenths per cent. (67.6 %).

(66.) The aggregate tentative valuation of all the special franchises assessed by the State board for the year 1900 (the assessment for which year this certiorari proceeding is brought to review)
756 was $307,290,806; and the aggregate amount of the final valuations of the same for the same year was $266,202,750.

(67.) The result of the transfer system established by the relator company in conjunction with the Metropolitan Street Railway Company is that passengers are charged much less than the regular fare of five cents for each single continuous ride on any single special franchise owned or leased by the relator, or operated by any other company in connection with the relator company, under said transfer system.

(68.) That by the terms of the said grant to the relator under which the relator company now holds and enjoys the special franchise hereinbefore referred to, it is obligated to pay to the city of New York on the first day of December of each year three per cent. of the gross receipts from the operation of its railroad during said year.

(69.) By virtue of the statute constituting the special franchise grant of the relator and the general statutes of the State, there was granted to and became vested in the relator, and its predecessors in title, the franchise to construct, maintain, operate and use the street railroad as above described, which franchise is property and constitutes an interest in perpetuity in the streets.

(70.) The facts proved in this case and the public laws of the State applicable thereto leave no room for doubt that a provision must be implied in the contract embodied in the franchise grant made to the relator company or to its predecessors in title to the effect that the amount which the company or its predecessors agreed to pay in exchange for the franchise rights granted should not be subsequently increased by the exaction of additional taxes or otherwise.

(71.) In the case of the street railroad franchise owned by
757 the relator, it was the intention of the legislature in granting the same, and of the grantees of such franchise, in accepting the same, that no other payment or compensation by way of taxes or otherwise should ever be exacted for the franchise so granted than was specifically reserved by the terms of the statute granting the same, in addition to the taxes required to be paid by the laws in force at the time of such grant.

(72.) In the case of the street railroad franchise now owned by the relator, The Central Crosstown Railroad Company, a valid and valuable consideration was paid for the same by the grantee of such franchise, which consideration was sufficient to support the contract embodied in such grant.

(73.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, the tangible property forming part of the special franchise of the relator is not taxable except upon the assessment made as provided in said chapter by the State Board of Tax Commissioners.

(74.) The rights to construct, maintain and operate street railroads over streets and public places in the city of New York owned by the relator having been constituted by direct legislative grant, and having been followed by actual construction and operation, are property rights that cannot be taken away or diminished by legislative or municipal action, except in the exercise of the police power or right of eminent domain.

(75.) Under the provisions of chapter 712 of the Laws of 1899, the duty of the local assessors in relation to the assessment of special franchises made by the State Board of Tax Commissioners is merely ministerial.

758 (76.) The action of the local assessors in placing on the tax rolls the assessed valuation of special franchises as made by the State Board of Tax Commissioners is merely ministerial.

(77.) The value of the special franchise of the relator, including the tangible part thereof, is materially less than $585,693.

(78.) The special franchise of the relator has no ascertainable value beyond the sum of $52,980, which sum, it has been stipulated, covers the value of the tangible parts of said special franchise.

(79.) At the time of the adoption of the constitutions of 1846 and 1894, the functions of assessing all real estate in the State of New York were exercised by the local assessors elected by the people of the respective localities or appointed by the authorities of such localities, and had been so exercised from the beginning of the State government.

(80.) By chapter 712 of the Laws of 1899, the functions of assessing certain real estate throughout the State, theretofore exercised by local assessors, were transferred to a State board appointed by the governor and confirmed by the senate.

(81.) The value of the real estate theretofore assessed by local assessors, the amount of which was so transferred for the year ending the second Monday of January, 1900, was a sum exceeding

ninety-six millions of dollars ($96,000,000), and the amount of intangible property designated as real estate and sought to be made assessable by chapter 712 of the Laws of 1899 was upwards of one hundred and seventy millions of dollars ($170,000,000) in addition, making a total of over two hundred and sixty-six millions of dollars ($266,000,000).

759 *Conclusions of Law.*

(1.) The assessment complained of by the relator is illegal in that the State board had no jurisdiction or authority to make the assessment for the reason that the statute, namely, chapter 712 of the Laws of 1899, under and pursuant to which the State board claims the power and authority to act in the matter and to fix and determine the valuation of special franchises for the purpose of assessment, is in violation of section 2 of article X of the Constitution.

(2.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions of assessment, which they exercised at the time of the adoption of the constitution of 1846, and at the same time transfers the same to a State board not elected by the people of the city or appointed by local authorities.

(3.) Chapter 712 of the Laws of 1899 is unconstitutional in that it takes away from the local assessors of the city of New York a substantial portion of the functions which they exercised at the time of the adoption of the State constitution of 1894, and at the same time transfers the same to a State board not elected by the people of the city or appointed by local authorities.

(4.) Under the provisions of chapter 712 of the Laws of 1899, the duty of the local assessors in relation to the assessment of special franchises made by the State Board of Tax Commissioners is merely ministerial.

(5.) The action of the local assessors in placing on the tax
760 rolls the assessed valuation of special franchises as made by the State Board of Tax Commissioners is merely ministerial.

(6.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, the tangible property forming part of the special franchise of the relator is not taxable except under the assessment made as provided in said chapter by the State Board of Tax Commissioners.

(7.) Under the provisions of section 47 of chapter 712 of the Laws of 1899, local assessors are prohibited from assessing the tangible property which forms part of any special franchise taxable under said chapter.

(8.) Under the provisions of chapter 712 of the Laws of 1899, the exclusive power of valuing and assessing special franchises is vested in the State Board of Tax Commissioners.

(9.) It was the intention of the legislature, in enacting chapter 712 of the Laws of 1899, that the intangible part of any special fran-

chise should be taxed upon an assessment made by the State Board of Tax Commissioners, or not at all.

(10.) All the parts of chapter 712 of the Laws of 1899 are so mutually connected with and dependent on one another, as to warrant the belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not have passed the residue independently.

(11.) The purpose of chapter 712 of the Laws of 1899 is to accomplish a single object only, to wit, the taxation of special franchises upon assessments made by the State Board of Tax Commissioners, and all the provisions of the chapter are necessary to accomplish that object.

761 (12.) Those provisions of the statute, namely, chapter 712 of the Laws of 1899, which relate to the valuation and assessment of special franchises by the State Board of Tax Commissioners, cannot be eliminated from the statute without essentially changing its scope and operation, and defeating its general purpose.

(13.) If those provisions of the statute, namely, chapter 712 of the Laws of 1899, which require the valuation and assessment of special franchises by the State Board of Tax Commissioners, are invalid, the remainder of the statute is not capable by its own terms of being carried into effect, consistently with the intent of the legislature which enacted it.

(14.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, and the assessment made pursuant to it, are in violation of section 10 of article I of the Federal Constitution, in that they impair the obligations of the contracts under the terms of which the relator company and its predecessors in title have for many years held its franchise to construct, operate and maintain street railroads in the city of New York.

(15.) Chap. 712 of the Laws of 1899 impairs the obligation of the contract embodied in the franchise grant made to the relator company and its predecessors in title and for this reason is unconstitutional and void.

(16.) The tax authorized by chapter 712 of the Laws of 1899, is to be laid on no property or right but the right to use the streets, and the tangible property in the streets connected with that right.

(17.) The right made taxable by chapter 712 of the Laws of 1899 is not the whole body of the relator's franchises, but merely
762 the special right aforementioned to use the streets and the tangible property in the streets connected with the same.

(18.) The property made taxable by chapter 712 of the Laws of 1899 does not include the general corporate franchise of the relator, nor any of the personal property, nor the good-will, of the relator, nor any of its real estate, except its special franchise.

(19.) The valuation of the special franchise, which, by chapter 712 of the Laws of 1899, is to be fixed by the State board, is the intrinsic value of the right to use the streets, as granted, and of the tangible property in the streets connected with that right, and not the

value of the use that is made of the right by the owner, nor the value of the profits derived from such use.

(20.) A special franchise has no ascertainable value as property, beyond the value of the tangible property in connection with it.

(21.) The value of the relator's franchises to use the streets cannot be separated from the value of its other property and rights used in its business.

(22.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, fails to prescribe any rule, method or principle of valuation for the special franchises sought to be taxed, and for this reason the statute violates the provisions of the Federal and State constitutions, which prohibit the taking of property without due process of law.

(23.) The assessment is illegal in that it is impossible, from the nature of the object taxed, to supply any rule, method or principle of valuation for the guidance of the assessors in valuing the special franchises sought to be taxed, and, for this reason, the statute,
763 namely, chapter 712 of the Laws of 1899, violates the provisions of the Federal and State constitutions, which prohibit the taking of property without due process of law.

(24.) The assessment is illegal because the statute, namely, chapter 712 of the Laws of 1899, is impossible of rational execution, in consequence of its failure to prescribe any rule, method or principle of valuation of the special franchises sought to be taxed, and must therefore be treated as a nullity, and an assessment under it is therefore in violation of both the Federal and State constitutions.

(25.) The assessment is illegal in that the statute, namely, chapter 712 of the Laws of 1899, violates section 24 of article III of the constitution of New York, in that it fails to state definitely the object to which the tax is to be applied without referring to some other law to fix such object.

(26.) The assessment is illegal because the relator was refused the full and fair hearing to which it was entitled by the constitution of the State and Federal Constitution before final assessment could properly be made against it.

(27.) The assessment is illegal, because the State board refused the relator the full and fair hearing provided for and contemplated by section 44 of article 2 of the tax law, the statute in such case made and provided.

(28.) The assessment of the relator's special franchise is illegal, because, in determining the valuation of the special franchise owned by the relator on January 8th, 1900, it was erroneous for the
764 State board, as they did, to consider as factors of value the gross and net earnings of the relator, as such earnings were derived, to a large extent, from the operation of special franchises not owned by the relator, but which were owned by and assessed to other railroad corporations.

(29.) The assessment is illegal because, in determining the valuation of the special franchise owned by the relator company as afore-

said, the board erred in considering the tax rate prevailing on real estate in New York county.

(30.) The assessment is illegal because, in determining the valuation of the special franchise owned by the relator on January 8th, 1900, it was erroneous for the State board to consider as factors of value the market value of the share stock of the relator, and the market value of the bonds of the relator.

(31.) The aggregate value of the bonds and share stock of the relator at their market prices represented all the property of every kind possessed by the relator and the good will of its business, and it is impossible to determine from such aggregate value or market prices the value of the special franchise owned by the relator on the date aforesaid.

(32.) The assessment is illegal because, under the tax law of this State, the State board had no jurisdiction to value any property of the relator, except the special franchise owned by it, and had therefore no right to consider, as they did consider, as a factor of value of the special franchise the fact that the relator owned other valuable property, and was in receipt of earnings derived partly from the use of such other property, and partly from the operation of another special franchise which it held under lease, but which was owned by and assessed to another railroad corporation.

765 (33.) No basis for the determination of the value of the relator's special franchise is afforded by the consideration of the following matters (or any of them), that is to say: the market value of the share stock of the relator, the market value of the bonds of the relator, the amounts of the gross and net earnings derived from the operation of the system of railways of the relator; the value of all the corporate or other assets of the relator; the value of the good-will of the relator; the rights of the relator to operate cars over the lines owned by other corporations; the earning capacity of the relator and its business methods and skill; the methods of operation and the personal management of the relator's system of railways; the right which the relator possessed to transfer passengers from one route or line of operation to another for a single fare; the right which the relator possessed to create and operate continuous routes of travel by the union of two special franchises, one of which it leased and another of which it owned; the productive capacity of said system; and the operation of relator's system of railroads as a whole.

(34.) The State Board of Tax Commissioners, in this proceeding, having testified that, in making their valuation of the relator's special franchise, they considered, as appreciating factors of value, certain facts and circumstances connected with the relator's business, and with its corporate property and obligations and the market value thereof, it follows that their consideration of the said facts resulted in making their valuation larger than it would have been had such facts not been considered by them.

(35.) The assessment is illegal for the reason that it is not the re-

sult of the application by the State board of any rule, method or principle of valuation whatever.

766 (36.) The assessment is illegal for the reason that the State board did not make a separate valuation of the tangible property connected with the special franchise on the basis of its cost of reproduction, but valued and assessed the tangible property, together with the intangible property, in one valuation and assessment.

(37.) The assessment is unequal in that the special franchise owned by the relator as aforesaid was valued by the State board for the purposes of assessment at a higher proportionate valuation than all other real estate in the city of New York upon the assessment roll of that city, to wit: such special franchise owned by the relator was valued and assessed at such sum as in the judgment of the respondents is the full actual value thereof, while all other real estate in the city of New York is assessed at a sum which in the judgment of the respondents and of the local assessors of that city is 67 per cent. of its full actual value.

(38.) If the assessment is deemed otherwise to be legal, it should be reduced to the sum of $392,414.31, that being 67 per cent. of $585,693, the amount at which the State board valued the special franchise of the relator.

(39.) The assessment is unequal in that it has been made at a higher proportionate valuation, to wit, that of 33 per cent., than that of other land and real estate in the tax district of New York, and of other land and real estate in the State of New York.

(40.) Even were the assessment reduced by deducting thirty-three per cent. thereof, for the purpose of correcting its inequality, it would still be erroneous for over-valuation, because the State

767 Board of Tax Commissioners, in valuing relator's special franchise, took into account, as appreciating factors of value, facts and elements which it was illegal for them to consider, and which afforded no basis for determining such value.

(41.) Even were the assessment reduced by deducting thirty-three per cent. thereof, for the purpose of correcting its inequality, it would still be erroneous by reason of over-valuation, because the State Board of Tax Commissioners, in valuing relator's special franchises, increased their valuation by considering as factors of value facts which they should have disregarded in determining such valuation.

(42.) Even were the assessment reduced to an amount which should bear the same ratio to the present assessment as the average assessment of real estate either in the city of New York or in the State of New York bears to the full value of such real estate in said city or State, the assessment would still be excessive and erroneous for overvaluation, because, in determining it, the State Board of Tax Commissioners increased their valuation of the relator's special franchise by considering elements of value which did not belong to such special franchise, with the result that their valuation included values which belonged exclusively to other property taxable under other laws.

(43.) Even if the assessment (for the purpose of correcting its inequality) were reduced to three hundred and ninety-two thousand four hundred and fourteen and 31/100 dollars ($392,414.31), that being sixty-seven per cent. of the said State board's valuation of relator's special franchise, the assessment would still be erroneous for overvaluation.

768 (44.) The inclusion by the State board in the final valuation on which their assessment of the relator's property has been based of any appreciating element or factor, the effect of which is incapable of pecuniary admeasurement, invalidates the entire assessment.

(45.) It is impossible to measure pecuniarily the effect on the valuation upon which the State board's assessment was based of the various appreciating factors, or any of them, which are found in this report to have illegally entered into the valuation as fixed by the State board.

(46.) The inclusion in the final valuation as fixed by the State board of the elements which are found in this report (of the referee) to have been illegally considered as appreciating factors, has resulted in a material over-valuation of the special franchise of the relator.

(47.) Even were the assessment reduced for the purpose of correcting its inequality, it would still be erroneous because of overvaluation by reason of the fact that the special franchise of the relator has no ascertainable value (beyond the value of the tangible part thereof) apart from the other property, franchise and business of the relator, with which its special franchise has become inextricably interwoven.

(48.) By virtue of the statute constituting the special franchise grant of the relator company, there was granted to and became vested in the relator company or its predecessors in title, rights perpetually to maintain, operate and use street surface railroads for public use in the conveyance of the public and property in cars upon and along the surface of the streets, avenues and high-

769 ways in the city of New York, described in such grant, and such right is now vested in the relator.

(49.) By virtue of the said statute and the general statutes of the State, there *were* granted to and became vested in the relator or its predecessors in title the franchise to construct, maintain, operate and use the street railroads as above described, which franchise is property and constitute an interest in perpetuity in the streets.

(50.) The right, privilege and franchise to construct and operate a street railroad granted to the relator or its predecessors in title, together with all exemptions and immunities to which the original grantees of the said right, privilege and franchise became or were entitled, are now vested in the relator, The Central Crosstown Railroad Company.

(51.) The grant to the relator company or its predecessors in title of its special franchise and the acceptance of the same by the grantee thereof constituted a contract within the meaning of section 10 of

article I of the Federal Constitution prohibiting States from passing laws impairing the obligations of contracts.

(52.) The facts proved in this case leave no room for doubt that a provision must be implied in the contract embodied in the franchise grant made to the relator company or to its predecessors in title to the effect that the amount which the relator company or its pre-cessors agreed to pay in exchange for the franchise rights granted should not be subsequently increased by the exaction of additional taxes or otherwise.

(53.) At all times when the street railroad franchise owned
770 by the relator was granted, it *it* was a rule of property in this State that neither the State nor the municipality could lawfully impose any further burdens or taxes on such franchises beyond those expressly reserved in the statutes and ordinances granting or consenting to the same and those required to be paid by the laws in force at the time such franchise was granted.

(54.) The street railroad franchise owned by the relator, was acquired and accepted by the grantees thereof in reliance upon the said rule of property, and the rights conferred by the said franchise are property rights based upon the said rule of property, and were acquired upon the faith of the same, and cannot now lawfully be disturbed by imposing any further tax or burden upon said franchise.

(55.) In the case of the street railroad franchise now owned by the relator, a valid and valuable consideration was paid for the same by the grantee of such franchise, which consideration was sufficient to support the contract embodied in such grant.

(56.) A perfected railroad franchise constituted either by direct legislative grant or by consent of the local authorities and property owners in pursuance of the constitution and general laws, or confirmed thereby, especially when followed by actual construction and operations, is a property right that cannot be afterwards taken away or diminished either by constitutional amendment or by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

(57.) The right- to construct, maintain and operate a street rail-
road over streets and public places in the city of New
771 York, owned by the relator, having been constituted by direct legislative grant, and having been followed by actual construction and operation, are property rights that cannot be taken away or diminished by legislative or municipal action, except in the exercise of the police power or the right of eminent domain.

(58.) The railroad franchise owned by the relator cannot be taken away or diminished nor the burdens upon it increased by additional taxation or otherwise, except in the exercise of the police power, or right of eminent domain.

(59.) The taxation of the special franchise of the relator under the provisions of chapter 712 of the Laws of 1899, is a diminution of the relator's property in the said special franchise, and is illegal because

it is the taking away of property without compensation or due process of law.

Dated New York, July 15th, 1902.

GEORGE S. BIXBY,
Attorney for Relator, 71 Broadway,
Borough of Manhattan, N. Y. City.

772 (*Decision.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN RAILROAD COMPANY *against* THE STATE BOARD OF TAX COMMISSIONERS.	Decision. Assessment of 1900, No. 15.

An order of reference having been made herein and entered in the office of the clerk of Albany county on the 18th day of April, 1901, by which it was referred to Hon. Robert Earl, as referee, to take and report to this court such evidence upon the several issues of fact raised by the petition, writ and return herein as might be adduced before him by either of the parties hereto, with his findings of fact and conclusions of law, and the said referee, pursuant to said order, having filed his report and the evidence and proceedings taken by and before him in the office of the clerk of Albany county, on the 15th day of July, 1902, and exceptions having been filed to said report, and this proceeding having come on for a hearing, trial and final determination before the court at special term thereof, held by the undersigned without a jury,

Now, after hearing counsel for the relator and for the respondents respectively, and findings of fact and conclusions of law having been proposed by the relator, I decide and find *pro forma* as follows:

773 *Findings of Fact.*

1.

That at the times hereinafter mentioned, the Central Crosstown Railroad Company (hereinafter also called the relator) was and still is a street railroad corporation created and existing under and pursuant to the laws of the State of New York, and has its principal office in the city of New York.

2.

That on January 8th, 1900, the relator was also the lessee of a street railroad franchise which was owned by the Christopher and Tenth Street Railroad Company.

3.

That the several streets, avenues and public places on which the relator has constructed and is engaged in operating a street surface railroad are set forth and enumerated in Exhibit 1.

4.

That a map of the borough of Manhattan in the city of New York was put in evidence by the relator as Exhibit 1, upon which are correctly delineated the street railroad franchises owned and leased by the relator as they existed on the second Monday, that is the 8th day of January, 1900, and which map is hereby found to be correct and to contain a correct delineation of said franchises and is made a part of this finding.

5.

That on January 8th, 1900, the special franchise owned by the relator embraced one granted right or privilege.

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6.

That said right and privilege had been granted on certain conditions and subject to the performance by the grantee thereof of certain terms, which conditions and terms appear in the schedules and charters annexed to the return herein and are hereby made a part of this finding.

7.

That by the terms of the said grant to the relator hereinbefore referred to, it is obligated to pay to the city of New York, on the first day of December of each year, three per cent. of the gross receipts from the operation of its railroad during said year.

8.

That the franchises owned and leased by the relator were on January 8, 1900, operated by the relator under and as one system.

9.

That prior to January 8, 1900, the relator had executed and delivered to the American Loan and Trust Company, as trustee, a mortgage to secure the payment of its bonds, amounting to the sum of $250,000, which mortgage conveyed to said trustee all street railroad franchises, railways, railroad routes and the real estate and personal property owned by the relator. All of the bonds secured by such mortgage, amounting to $250,000, had, prior to January 8, 1900, been issued and were outstanding and unpaid at that date.

10.

775 That by virtue of statutes of the State, there was granted to and became vested in the relator, and its predecessors in title, the franchise to construct, maintain, operate and use the street railroad as above described, which franchise is property and constitutes an interest in perpetuity in the streets.

11.

That the relator has filed with the State Board of Tax Commissioners all reports required by law or required to be filed by said commissioners. Copies of such reports are in evidence and reference is made thereto for their contents.

12.

That thereafter and on or about the 20th day of March, 1900, the State Board of Tax Commissioners, claiming to act under and pursuant to chapter 712 of the Laws of 1899, proceeded to fix and determine the valuation of the special franchises of the relator company at the sum of $1,197,020, and did thereupon make the assessment of such special franchise at the sum aforesaid.

13.

That immediately after making the said assessment, the State board gave to the relator company a notice in writing stating in substance that such assessment had been made, and that the total valuation of the relator's special franchise was $1,197,020, and that the State board would meet at its office in the city of Albany on the 10th day of April, 1900, at 10 o'clock a. m., to hear and determine any complaint concerning such assessment.

14.

That the relator company, by its counsel, appeared, pur-
776 suant to such notice, at the time and place therein stated, before the State board and requested to be informed by the board concerning and as to what was the amount which said board had determined to be the valuation of the tangible property of the relator company, and as to what was the amount fixed and determined by the board to be the valuation of the intangible franchises, rights and permissions of the relator company; and as to what was the method, rule or principle, if any, adopted and applied in ascertaining and determining the valuation; but the board refused to give the relator company the whole or any part of the information so requested.

15.

That the relator company thereupon complained of the assessment, and filed with the State board a written statement under oath specifying the grounds of its complaint.

16.

That thereafter and on or about the 30th day of April, 1900, the State Board of Tax Commissioners, still claiming to act pursuant to chapter 712 of the Laws of 1899, finally determined the valuation of the special franchise of the relator company to be the sum of $585,693, and on or about April 30, 1900, filed with the department of taxes and assessments in the city of New York a written statement of such valuation as finally fixed and determined by the State board, and at or about the same time gave notice to the relator company that such written statement had been filed with the department of taxes and assessments of the city of New York.

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17.

That thereafter the commissioner of taxes and assessments of the city of New York prepared the assessment rolls of the real and personal property of the several parts of the city for the year 1900, and entered thereon, before the final review or certification of such rolls by them, the valuation of such special franchises of the relator company as fixed by the State board, and having annexed thereto their certificate that the assessment rolls were correct in accordance with the entries of the several books or records in that department, duly verified the same and delivered such assessment rolls to the municipal assembly of New York city, as required by law, on the first Monday of July, 1900.

18.

That within fifteen days after the final completion and filing of the assessment roll in the city of New York, the relator company applied for and obtained a writ of certiorari to review the assessment, pursuant to which writ this proceeding is pending.

19.

That in making such assessment against the relator, the State board fixed upon a certain figure as covering the value of the tangible and intangible property together, and did not separately arrive at a valuation of the tangible and intangible parts respectively.

20.

That the tangible property of the relator company, the value of which was included in the assessment so made by the State board, had for many years previous to such assessment been
778 entirely assessed by the local assessors in the city of New York.

21.

That for the purpose of this proceeding, it has been stipulated on this hearing by the parties that the value of the tangible property connected with the special franchise of the relator company, based upon its cost of reproduction, was, on January 8, 1900, the sum of $52,980.

22.

That the defendants valued the property of the relator at what they deemed its full and fair value, taking into consideration the original report made by it to the board, subsequent supplemental or special reports, the report of the State railroad commissioners, the records of the State comptroller's office, the reports of the New York city department of assessment and taxes, and after consideration of information from experts retained by the board and of their confidential appraisers and special agents, and they also had before them the *Poor's Manual* and *Financial Chronicle*, and considered all of the elements, factors and considerations which they were enabled to gather from these sources. They based their valuation of the tangible property solely upon the cost of reproduction, with an allowance for depreciation.

Defendants considered, among other things, in arriving at their valuation of relator's property, the fact that it had the right, partly owned and partly acquired from another company, to operate two continuous lines from the East river to the North river, and that it operated such lines; that it only owned the right to run over one of such lines, and that it leased the other of such rights; that the franchise of the relator was more or less valuable by reason
779 of the acquisition of such right, whether the relator had contracts with another company to run over its lines; and the fact of its having control and operation of a leased line.

They had before them and considered a map showing the entire system of the Central Crosstown Railroad Company. They considered the market value of its stocks and bonds for what it might be worth, and not as conclusive or as an absolute measure of valuation. They considered the earning power of the property of the company as reported to them by it. They considered the tax rate in New York county, also net and gross earnings, the character of the motive power used, the amount of percentage tax or license fee paid to the city. They also considered the value of real estate off the line of the road; the fact whether earnings were large or small, and assessed the special franchise at what the members of the board agreed was the full and fair value thereof.

That in addition to these facts, which were before the commissioners previous to the hearing of relator, the commissioners had upon and after said hearing before them, and considered, the statements, evidence, affidavits and arguments upon such hearing for the purpose of arriving at their final conclusion as to the valuation of relator.

That in assessing the special franchises of the relator, and in arriving at the valuation thereof, the defendants did not include in such assessment the valuation of any property except such as is in, above, upon, under or running through the public streets and public places of said city, including the franchises, rights, authority or permission to construct, operate and maintain its foundation, road-bed, substructure, superstructure, with their appliances in, upon, above,

under or through said streets and public places. They did not include in such assessment or valuation the value of the right to be, or the franchise to be a corporation. They did not include the
780 value of the good will of the business carried on by such corporation, nor did they include the value of any property other than that above stated and described as having been included by them. That such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or right to use such streets and public places which the defendants were able to ascertain.

23.

That the annual gross earnings of the relator for the year 1899 were $608,047.96. Such earnings are derived in part from the operation of the relator system of railroads in the borough of Manhattan, in the city of New York, consisting of the Central Crosstown Railroad Company and its leased line, the Christopher and Tenth Street Railroad Company, and also in part from the transfer of passengers between the relator's said system of roads and the Metropolitan system of railroads in the borough of Manhattan, city of New York.

24.

That the actual and true value of the special franchise of the relator as finally determined by the defendants and as I find is $585,693, and no evidence was given before me to show that it is less.

25.

That other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and therefore to equalize this assessment with the assessment of such other
781 real estate there should be deducted from the $585,693 the sum of $193,278.69, and there remains the sum of $392,414.31 as the value of the special franchise of the relator for the purposes of assessment and taxation under the special franchise tax act.

26.

That the following is a correct statement of the assessed value of real estate in the State and in the city of New York, respectively, for the years hereinafter stated:

Total assessed real estate in State for 1899	$4,811,593,059
Do. do. 1900	5,093,025,771
Total assessed value all special franchises in State for 1900	266,202,759
Total ass'd val. of tang. prop. for year 1899 included in the spec. franchises ass'd in 1900 for whole State	96,061,902

Total assessed value of real estate in New York city, by boroughs, for 1899.

Manhattan and Bronx	$2,178,605,905
Kings	609,822,267
Queens	103,752,600
Richmond	40,264,692
Total	$2,932,445,464

Total assessed value of all real estate in the city of New York, exclusive of tangible property included in the special franchise, by boroughs, for the year 1900.

Manhattan and Bronx	$2,369,997,504
Kings	651,383,900
Queens	104,427,872
Richmond	42,723,921
Total	$3,168,533,200

Total assessed value of all special franchises in the city of New York, by boroughs, for the year 1900.

Manhattan	$166,763,669
Bronx	7,272,249
Brooklyn	36,743,057
Queens	6,544,312
Richmond	2,356,064
Total	$219,679,351

Total assessed value of the tangible property for the year 1899, included in the special franchises assessed in 1900 for the city of New York, by boroughs.

Bronx	$3,768,600
Brooklyn	18,048,775
Manhattan	50,428,750
Queens	2,935,600
Richmond	1,403,500
Total	$76,585,225

Conclusions of Law.

1. That chapter 712 of the Laws of 1899, is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchise for the purposes of assessment and taxation.

2. That the relator had a hearing and due process of law before the defendants upon the review of their assessment on the 10th day of April, 1900, and was not there deprived of any of its legal or constitutional rights.

3. That it was lawful to assess as one franchise, the franchise, right, authority or permission which the relator had in the streets of New York, and which it operated as one system.

4. That to equalize its assessment with the assessment of other real property in the city of New York, the relator is entitled to a reduction from its assessment of the sum of $193,278.69, and that the assessment as thus reduced, to wit, the sum of $392,414.31, must be taken as the value of the relator's special franchise for the purposes of assessment and taxation under the act above
783 referred to, and that the necessary corrections should be made to that end in the assessment roll and tax books in the city of New York.

I refuse to make the findings of fact and conclusions of law submitted by the relator to me, except as I have found or made them hereinbefore.

I accordingly direct that a final order be entered in this proceeding which shall adjudge that said assessment is excessive and unequal in that other real property in the city of New York is assessed at 67 per cent. of its full value, whereas the special franchise of the relator is assessed at its full value; that the said assessment of the relator's special franchise as made by the State Board of Tax Commissioners and as entered upon the assessment rolls of the city of New York for the year 1900 at $585,693 is excessive and unequal, the equalized valuation of such special franchise being and being hereby fixed at $392,414.31; that the said assessment be corrected and reduced to said amount of $392,414.31, so as to make it conform to the valuations and assessments of other property upon the same rolls and to secure equality of assessment, and that as so reduced said assessment be confirmed; that upon payment by the relator to the receiver of taxes of the city of New York or other proper officer of the amount of tax due upon said equalized and corrected valuation, less all sums required by law to be deducted therefrom, the said receiver of taxes or other proper officer shall receive the same in full satisfaction of the tax appearing upon the assessment rolls of said city for the year 1900 against said special franchise and shall wholly discharge and cancel said tax.

Dated Albany, July 15, 1902.

D. CADY HERRICK,
Jus. Sup. Ct.

784 (*Exceptions to Decision.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN RAILROAD Company *against* THE STATE BOARD OF TAX COMMISSIONERS. | Assessment of 1900, No. 15.

Exceptions to decision.

The relator herein, saving and reserving all objections to the manner and form of the decision, findings of fact and conclusions of law of the court herein not herein precisely and exactly specified, files the following exceptions to the same:

(1.) The relator specifically excepts to the court's 22nd finding of fact and to each and every part thereof, and without limiting this exception further specifically excepts to so much of said 22nd finding as finds that the respondents considered the market value of the relator's stocks and bonds for what it might be worth and not as conclusive, or as an absolute measure of valuation, further specifically excepts to so much of said 22d finding as finds that the respondents in assessing the special franchise of the relator, and in arriving at the valuation thereof, did not include in such assessment the valuation of any property except as is in, above, upon, under or running through the public streets and public places of said city,
785 including the franchises, rights, authority or permission to construct, operate and maintain its foundation, roadbed, substructure and superstructure, with their appliances in, upon, above, under or through said streets and public places; and further specifically excepts to so much of said 22d finding as finds that the respondents did not include in such assessment or valuation the value of the right to be or the franchise to be a corporation; and further specifically excepts to so much of said 22d finding as finds that the respondents did not include the value of the good will of the business carried on by such corporation, nor did the respondents include the value of any property other than that stated and described in said 22d finding as having been included by them, and further specifically excepts to so much of said 22d finding as finds that such assessment as made by such special franchise of the relator includes the value of the tangible and intangible property in the streets of the city of New York, and was arrived at upon consideration of all the facts and circumstances affecting the value of such property, including the use or the right to use such public streets and public places which the respondents were able to ascertain.

(2.) The relator specifically excepts to the court's 24th finding of fact, and to each and every part thereof; and further specifically

excepts to so much of said 24th finding as finds "that the actual and true value of the special franchise of the relator as finally determined by the defendants and as I find is $585,693;" and further specifically excepts to so much of said 24th finding as finds that "no evidence was given before me to show that it is less," both as a finding of fact and as an implied conclusion of law, and relator specifically excepts to such implied conclusion of law as found by the court, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

786 (3.) The relator specifically excepts to the court's 25th finding of fact, and specifically to so much of said 25th finding that finds or implies that the value of the relator's special franchises is $585,693, and that the sum to be deducted is $193,278.69, and that $392,414.31 is the value of the relator's special franchises for the purpose of assessment and taxation under the special franchise tax act. The relator, however, does not except to so much of said 25th finding as finds or implies that other real estate in the city of New York was assessed at only 67 per cent. of its actual and true value, and that to equalize the relator's assessment with the assessment of such other real estate, a deduction of 33 per cent. should be made from the actual value.

(4.) The relator specifically excepts to the 1st conclusion of law as found by the court, and as to the whole thereof as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(5.) The relator specifically excepts to the 2d conclusion of law as found by the court, and as to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(6.) The relator specifically excepts to the 3d conclusion of law as found by the court, and to the whole thereof, as against the evidence, contrary to the evidence, against the weight of evidence, and unsupported by the evidence.

(7.) The relator specifically excepts to the 4th conclusion of law as found by the court, as against the evidence, contrary to the evidence, against the weight of evidence and unsupported by the evidence, except to so much thereof as finds or implies that the relator is entitled to a deduction from the actual value of its special
787 franchise for the purpose of equalizing its assessment with the assessment of other real property in the city of New York.

(8.) The relator specifically excepts to the court's refusal to find the relator's 3d to 15th, 19th, 20th, 22d, 26th to 31st, 35th to 58th, 60th, 64th, 66th to 80th, all inclusive, proposed findings of fact, as submitted.

(9.) The relator specifically excepts to the court's refusal to find the

relator's 1st to 36th and 40th to 59th, all inclusive, proposed conclusions of law, as submitted.

Dated New York, July 15, 1902.

GEORGE S. BIXBY,
Attorney for Relator,
71 *Broadway, Borough of Manhattan, City of N. Y.*

To John Franey, Esq., county clerk.
To Hon. John C. Davies, attorney-general, attorney for respondents.

788 (*Final Order.*)

At a special term of the supreme court of the State of New York, held in and for the county of Albany, at the county court house, in the city of Albany, on the 15th day of July, 1902.

Present: Hon. D. Cady Herrick, justice.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Final Order. Assessment of 1900, No. 15.

A writ of certiorari having heretofore been duly allowed in this proceeding pursuant to provisions of article XI of the tax law as amended by chapter 712 of the Laws of 1899, upon the verified petition of the relator herein to review the action of the State Board of Tax Commissioners in assessing the special franchises of the relator; proof of due service on the said commissioners of the said writ, together with copies of the petition on which it was granted and of the order directing the said writ to issue having been made and filed; the said State Board of Tax Commissioners having made a return to said writ; an order of reference having been made herein and entered in the office of the clerk of Albany county, on the 18th day of April, 1901, by which it was referred to Hon. Robert Earl to take and report to this court such evidence upon the
789 several issues of fact raised by the petition, writ and return herein, as might be adduced before him by either of the parties hereto with his findings of fact and conclusions of law, and the said referee pursuant to said order having filed his report in the office of the clerk of Albany county, on the 15th day of July, 1902, and exceptions having been duly filed thereto, and upon the coming in of said report, this proceeding having been brought on for a hearing and trial and final determination before this court, upon due notice to all appearing herein, upon the evidence and proceedings so reported, together with the exceptions to the findings of fact and conclusions of law of the said referee, and after hearing counsel for the relator and respondents respectively, and no further evidence being adduced by either party and further findings of fact and conclusions of law having been submitted and this court

having duly rendered and filed its decision in writing herein, and the relator having duly filed exceptions thereto;

Now, upon the said petition, order directing said writ to issue, writ, return, order of reference, report, decision, and all the papers and proceedings heretofore had herein, and upon motion of the attorney-general,

It is hereby ordered, adjudged and determined that said assessment is excessive and unequal in that other real property in the city of New York is assessed at 67 per cent. of its full value, whereas the special franchise of the relator is assessed at its full value; that the said assessment of the relator's special franchise as made by the State Board of Tax Commissioners and as entered upon the assessment rolls of the city of New York for the year 1900 at $585,693 is excessive and unequal; that the equalized valuation of such special franchise is and is hereby fixed at $392,414.31, to which amount the said assessment is hereby corrected and reduced so as to make it conform to the valuations and assessments of other property upon the same rolls and to secure equality of assessment, and as so reduced said assessment is
790 hereby confirmed; that upon payment by the relator to the receiver of taxes of the city of New York or other proper officer of the amount of tax due upon said equalized and corrected valuation, less all sums required by law to be deducted therefrom, the said receiver of taxes or other proper officer shall receive the same in full satisfaction of the tax appearing upon the assessment rolls of said city for the year 1900 against said special franchise and shall wholly discharge and cancel said tax.

Enter.

D. CADY HERRICK, *J. S. C.*

(Endorsed:) "Entered in the office of the clerk of Albany county on the 15th day of July 1902."

791 (*Notice of Appeal.*)

Supreme Court, Albany County.

PEOPLE *ex Rel.* THE CENTRAL CROSSTOWN Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. } Notice of Appeal. Assessment of 1900, No. 15.

SIRS: Please take notice that The Central Crosstown Railroad Company, the relator herein, hereby appeals to the appellate division of the supreme court, for the third department, from the final order in the above-entitled proceeding, dated the 15th day of July, 1902, and entered in the office of the clerk of Albany county on the

15th day of July, 1902, and from so much of said order as confirms the assessment of the relator's special franchises at $392,414.31.

GEORGE S. BIXBY,
Attorney for Relator, 71 *Broadway, Borough of Manhattan, N. Y. City.*

To John Franey, Esq., county clerk.
To Hon. John C. Davies, attorney-general, attorney for the respondents.

792 (*Affidavit of No Opinion.*)

Supreme Court, Albany County.

THE PEOPLE *ex Rel.* THE CENTRAL Crosstown Railway Company *vs.* THE STATE BOARD OF TAX COMMISSIONERS. | Affidavit of No Opinion. Assessment of 1900, No. 15.

STATE OF NEW YORK, *County of New York*, } *ss.:*

George S. Bixby, being duly sworn, deposes and says that he is attorney for the relator in the above-entitled proceeding; that no opinion was rendered by Mr. Justice Herrick in this proceeding.

GEORGE S. BIXBY.

Sworn to before me this 16th day of July, 1902.
E. A. MACCLEAN,
Notary Public, N. Y. Co., No. 1.

793 & 794 *Stipulation and Waiver of Certification.*

Supreme Court, Appellate Division, Third Department.

THE PEOPLE *ex Rel.* THE CENTRAL Crosstown Railroad Company *against* THE STATE BOARD OF TAX COMMISSIONERS. | Stipulation and Waiver of Certification. Assessment of 1900, No. 15.

It is hereby stipulated and agreed, pursuant to section 3301 of the Code of Civil Procedure, that the foregoing are true and correct copies of the order appealed from herein, the notice of appeal and all the papers and evidence upon which the court below acted in making such order on file in the office of the clerk of Albany county, and the certificate of the clerk to that effect is hereby waived.

Dated Albany, July 22nd, 1902.

GEORGE S. BIXBY,
Attorney for Relator-Appellant.
JOHN C. DAVIES,
Attorney-General, Attorney for Respondents.

795 *Memorandum of Decision.*

Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company, Appellant,
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. Stearns, Composing and Constituting the State Board of Tax Commissioners of the State of New York, Respondents.

Order appealed from affirmed on the facts and reversed on the law, and assessment vacated, upon opinions in People *ex rel.* Metropolitan Street Railway Company, *vs.* State Board of Tax Commissioners, decided this term.

Form of order, if not agreed upon, to be settled by Chase, J.

796 *Order of Appellate Division.*

At a term of the appellate division of the supreme court of the State of New York held in and for the third judicial department, at the court house of the appellate division in the city of Albany, on the 6th day of January, 1903.

Present: Hon. Charles E. Parker, P. J.; Hon. Walter Lloyd Smith, Hon. S. Alonzo Kellogg, Hon. Emory A. Chase, Hon. Alden Chester, JJ.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* Central Crosstown Railroad Company, Relator-Appellant,
against
THE STATE BOARD OF TAX COMMISSIONERS, Respondents.

Proceedings of 1900. No. 15.

The above named relator, Central Crosstown Railroad Company, having appealed to the appellate division of the supreme court for the third judicial department from the final order in the above entitled proceeding entered in the office of the clerk of Albany county on the 15th day of July, 1902, and from so much of said order as confirmed the assessment of the relator's special franchise at $392,414.31, and said appeal having been duly argued by counsel for the relator-appellant and by counsel for the State Board of Tax Commissioners, respondents, and all things having been duly considered, now, on motion of George S. Bixby, Esq., attorney for the relator, it is

797 Ordered, adjudged and determined that the order appealed from so far as it confirms the assessment upon the relator's

special franchise at $392,414.31 be and the same is hereby affirmed on the facts, and be and the same is hereby reversed on the law; and it is further

Ordered, adjudged and determined, that said assessment upon the relator's special franchise as confirmed as aforesaid at $392,414.31 is illegal and void, and the same is hereby directed to be stricken from the assessment roll.

JOSEPH H. HOLLANDS, *Clerk.*

798 *Opinion of Parker, P. J.*

Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* Metropolitan Street Railway Company, Appellant, *against* THE STATE BOARD OF TAX COMMISSIONERS, Respondent. | Argued November Term, 1902.

Before Parker, P. J.; Smith, Kellogg, Chase, and Chester, associate justices.

The relator herein seeks to review and vacate the assessment made against it by the State Board of Tax Commissioners under the provisions of the so-called special franchise tax act; and the proceedings are taken under the provisions of article II of the tax law, as amended by chapter 712 of the Laws of 1899. A certiorari was issued, and the issues made by the return thereto were duly referred. Upon the coming in of the referee's report the special term approved and adopted the same, and made an order modifying the assessment in some particulars, and, as so modified, sustaining the same. From such order this appeal is taken.

Henry A. Robinson, (Wm. H. Page, Jr., of counsel), for appellant.
John C. Davies, attorney-general, (J. Newton Fiero, of counsel), for respondent.

PARKER, *P. J.:*

The first question presented by this appeal is whether the provisions of the law which authorize the assessment and tax com-
799 plained of are violative of section 2 of article 10 of our State constitution. Such act, being chapter 712 of the Laws of 1899, first amends section 3 of the tax law by adding to the subjects of taxation therein specified the right or franchise to construct, maintain or operate upon, over or under the streets or public places of any town or municipality in the State, the tangible property thereon which was already specified in the section as being real estate and therefore assessable. The value of such tangible property, plus the

value of the right to maintain and operate the same, is thereafter to be assessed and taxed together, and is denominated in the act as a "special franchise." No criticism is made that this addition to the taxable property named in the section violated any provision of the constitution; but the act further provides that the assessment of such special franchise shall be made by the State Board of Tax Commissioners. That board is required to fix the valuations of all such special franchises wherever found in the State, and to report such assessment or valuation to the proper local assessor, and such local officer is required to place such special franchise upon his roll of the taxable property in his district, at the valuation so received, and the tax is thereupon levied and collected against the same in the same manner and for the same purposes as against the other property on such roll.

This provision it is claimed violates the above cited section of the constitution, for the reason that it deprives the local assessors of a portion of their duties as such assessors, and directs the performance of the same duties by officers who are not chosen by the electors or any authorities of such locality.

In the *Raymond* case (37 N. Y., 428), this section, which is familiarly known as the home-rule provision of the constitution, received judicial construction in its application to the subject of assessment for the purposes of taxation.

In that case, the legislature by chapter 410, Laws of 1867, sought to transfer the duties of the commissioners of taxes and assessments for the city of New York, who were officers appointed by local authorities, to a board of five commissioners appointed by the governor, by and with the consent of the senate. At the time of the adoption of the constitution of 1846, such duties of assessment were, and for a long time had been performed by district assessors. By various acts passed in 1850, 1857 and 1859, the legislature had regulated the performance of such duties and changed the officers who were to perform them. But in each instance the selection of such officers was left to local authorities. The act of 1867, however, sought to change the selection of such officers from the city to the State, and it was at once challenged as being violative of the home-rule provision of the constitution. The question came before the court in the case above cited, and it was there distinctly held as follows: That beyond controversy the office in question was *exclusively* a city office. That the duties imposed by the act upon the new board, although broader in their extent, were essentially the same as those exercised by the city assessors in 1846. That the plain intent of the section of the constitution in question "was to preserve to the localities the control of the official functions of which they were then possessed, and this control was carefully preserved (consistent with the power of the legislature to make needful changes) by restricting the power of appointment of other officers to perform the same functions, to the people, or some authority, of the locality." That, hence, the act of 1867 deprived the people of the city of a right *secured* to them by the constitution, and was therefore void.

This case has never been reversed or modified, so far as I can ascertain, and would, I think be conceded by the respond-
801 ents in this case, to be a controlling authority in a case where the conditions were in all respects similar.

But, in what respect does that case differ, in principle, from the one before us? There the act sought to transfer from local assessors to those appointed by the State authorities, the duty of assessing all the property in the city of New York. The decision is that the legislature was *without authority* to do that thing; that the function of assessing such property was, by the constitution, *secured* to officers selected by the locality. The act before us does not transfer the duty of assessing *all* the property in the various tax districts to the State assessors, but only all of a certain specified kind. Now, if the legislature is without authority to transfer the duty of assessing all, I am at a loss to discover whence it gets the right to interfere with the assessment of any part of such property. The right to have all the property in its locality assessed by officers chosen by itself, was secured to each town and municipality in the State by the constitutional provision in question; and, in my judgment, the legislature has no more power to infringe upon that right by withdrawing from its operation one particular species of property, than it has to withdraw a dozen. It is clear that by the statute before us, the right to assess a distinct kind of property in every district, and in some localities a very considerable portion thereof, is transferred from local to State assessors; and this transfer would seem to be as unwarranted as was the transfer attempted by the statute of 1867, which the *Raymond* case condemned.

It would seem that such decision "absolutely dominates" the case before us, and should control our disposition of the same. And so it does, even in the judgment of the learned jurist whose de-
802 cision as referee was adopted by the court at special term, and whose opinion is now before us, were it not that he sees a distinction in the fact that the amount of property transferred from local to State assessment is, in every instance, very small as compared with the whole amount of property taxed, and in some localities does not amount to anything. All of the principles decided in the *Raymond* case he seems to adopt, but he sustains the act before us upon the theory that it does not substantially interfere with the home-rule principle, which it is the purpose of this section of the constitution to protect. The argument is, that it does not take away from the local assessors enough of their functions to operate as a substantial invasion of the right of home rule in any locality, and that therefore it is not a violation of the provisions of that section. As illustrating and sustaining this claim, he cites many cases in which acts of the legislature have been sustained that, to some extent, transferred from local to State officers certain duties which the local officers might, within the line of their duties, have performed. But in no one of them do I find that the act was sustained upon the ground upon which the referee would sustain this act.

In the *Draper* case (15 N. Y., 532), which is one of the earliest

cases to adjudicate upon this section, the validity of a law was in question, which created a new metropolitan police district from the city of New York and three adjacent counties, and which provided for the appointment by State officers of the commissioners therein and abolished the existing police departments of the several municipalities within such district. That case sustained the act, on the ground that the State had authority to create new civil divisions for police purposes and to administer through its own officers the duties and regulations prescribed for the same. It dis-
803 tinctly held that had the act applied to the city of New York alone, it could *not* have been sustained; but it denied that the constitution assumed that the subject of police was localized in the several cities and counties of the State. It held that, "as a political society the State has an interest in the repression of disorder and the maintenance of peace and security in every locality within its limits; and if from exceptional causes the public good requires that legislation, either permanent or temporary, be directed toward any particular locality, whether consisting of one county or of several counties, it is within the discretion of the legislature to apply such legislation as in its judgment the exigency of the case may require; and it is the sole judge of the existence of such causes." Hence it treated the authority of the State upon the subject of police as paramount over that of the localities; and substantially held that, for such reason, no exclusively local function had been interfered with. As to such functions, there was in fact no right of home rule to be preserved to the localities. And this is the principle which pervades and controls all the cases relied upon by the court below. In the *Capital Police* case (36 N. Y., 285) the act was held good upon the same principle; while in the *Albertson* case (55 N. Y., 50) the act was condemned because it was held to apply to the city of Troy only. So in the case *Rathbone v. Worth* (150 N. Y., 459), the act concededly dealt with the subject of police for the city of Albany merely, and a very slight interference with its power of local appointment was condemned.

Upon the same principle, statutes concerning excise (34 N. Y., 657) and the preservation of the public health (37 N. Y., 661) were sustained. So those authorizing the construction of public parks, avenues, and even a court house, by commissioners named by the State, have also been sustained, even though such construc-
804 tion was within the scope of the functions of local officers. *Astor* case (62 N. Y., 567); *McDonald* case (69 N. Y., 362); *Cheritree* case (6 T. & C., 473); *Harlon* case (57 Barb., 383). But the foundation of each decision has been, that the State had a paramount right to direct the work to be done, and hence could do it through its own instrumentalities. This is especially made clear by the reasoning of the opinion in the *Oneida Courthouse* case (170 N. Y., at page 108).

My analysis of these cases is made only for the purpose of ascertaining how far they sustain the principle upon which the court below has decided this case. Whatever criticism has been, or may

be, made of any of them is quite unimportant to this case, so long as it is apparent that in neither is the decision placed upon the ground that the infringement complained of was not sufficient to substantially imperil the principle of home rule. In many of them the functions of the local officer were entirely transferred, and in each of them the controlling principle has been that the act of the legislature did not invade any right or function that was *exclusively* local in its character. In each instance it was held that the State had the paramount right to control the subject affected by the act, and hence that there was no invasion of local functions. As is said in the very excellent and scholarly brief submitted by the appellant's counsel on this question, it has been the *nature* of the power sought to be conferred upon the State officers that has controlled the decisions of the court.

Whenever the courts were of the opinion that the act did not interfere with any functions that were *exclusively* local, then the act was sustained, even though it *wholly* abolished the local office and transferred its functions to a State or department officer.

805 But whenever the functions affected by the act were exclusively local, whenever they *did not* come within the category of those over which it has always been recognized that the State, for the benefit of the State at large, has the paramount control, then any transfer whatever of such local functions has *not* been permitted. And therein lies the clear distinction between the *Raymond* case and those above cited. It is practically conceded by the referee that the subject of assessment of local property for local taxation is not a subject over which the State has paramount authority. As stated by him, "the assessment of property for the purposes of taxation has always in this State been a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is entrenched in the constitution to secure to the people the home rule to which they had always been accustomed, and of which the people of our race have always been tenacious." Therefore, as against the position taken by the court below no argument is needed to establish that proposition.

A broader and bolder position, however, was taken upon the argument of this appeal. It was there said that no authority can be found for the claim that the assessment of property for local taxation is a function exclusively appertaining to local officers, and that the State has the same power to take from a local officer his duties and transfer them to a State officer as it had to take from the police commissioners of the city of New York their duties and transfer them to officers of a department of the State. In short, that its power over the subject of assessment is as paramount as is its power over all the several subjects referred to in the cases above cited, and that while the constitution prohibits the State from filling a local office which at the time of its adoption was filled by election or appoint-

806 ment by local authorities, yet it does not prohibit it from abolishing such local office and transferring the duties of that office to an officer of the State at large; that it may take to *itself* the

performance of any, or all, the functions of the local office, but it may not name the local officer to perform them; and so far as the question now before us is concerned, this is upon the theory that the State possesses the absolute power to tax, and hence it may take to itself the assessing of property, which is but an incident to the power of taxation. Evidently this theory utterly annihilates the constitutional protection to the principle of home rule for local municipalities, and leaves very little importance or effect to the section in question. It is at variance with many decisions of the courts construing this section and is approved by none. In the recent decision in this court of the *Brenner* case (67 App. Div., 381) it was said, "It must be regarded as well settled that the purpose of the constitutional provision in question is to secure to localities the fundamental right of self-government; that it protects all official duties existing at the time of its adoption vested in local officers, and inhibits the *transference* of such duties to officers not elected by the electors of the locality or appointed by local authorities; that it is not the officer but the office, the existing duties and functions, to which the protection is extended and which cannot be *transferred to an officer elected or appointed other than in the prescribed manner*." And this case was affirmed in the court of appeals. (170 N. Y., 185.)

Moreover, the *Raymond* case above cited is a direct authority against such view. As shown above, it declares that the plain purpose of the section was to preserve to localities the *control* of the official functions of which they were possessed at the time it was passed, and that "any other construction would render the
807 section in question, when applied to the cities of the State, substantially nugatory." Undoubtedly at that time assessors of the localities were the *only* ones whose duty it was to assess property for local taxation. If the power to make such assessments may be now transferred to a State officer the *control* of the localities over that subject is as much taken away as if it were transferred to a local officer named by the State; and thus the purpose of that section is evaded. Clearly the *Raymond* case proceeds upon the theory that the duty of assessing local property for the purpose of local taxation was exclusively a function of the local assessors; and hence is authority for the claim that such duties may not be transferred by the legislature to *any* officer whatever who is not chosen by the localities themselves.

We are left, then, with the single question whether the views of the court below can be sustained upon principle only.

Its argument is, that the amount of property, the assessment of which is transferred from local to State assessors by this act, is so inconsiderable a portion of the whole that, as a matter of fact, neither of the localities is "in any '*material*' manner deprived of local self-government." That therefore their home-rule rights are not "substantially" invaded, and hence it does not at all infringe against the constitutional prohibition.

But the question is not whether such transfer affects their home-rule rights or their local self-government "materially" or "substan-

tially," or, as I understand the argument, to an extent sufficient to do them any harm; but whether it does, or does not, amount to a direct and actual invasion of such rights. Beyond controversy, this act takes away from the local assessors the function of assessing a certain kind of property and transfers it to the State Board of Tax Commissioners, and to this extent makes such board per-
808 form the functions of a local officer; and, if we sustain this act, we must sustain their authority to do that very thing. But this is the very thing that the constitution says they may not do. Officers appointed by State authority may not be authorized to perform the functions of an office exclusively local. Clearly, the invasion which we would thus sustain, if repeated, would ultimately transfer the whole function of assessment from local to State officers; and so it would seem that the first invasion is as much a violation of the constitutional prohibition, as would be the one that transferred the last remnant of property remaining to the local assessor.

I cannot agree that the principle of home rule is not *endangered* because the *courts* may tell the legislature that it has *intruded* upon it far enough. Such is not the constitutional scheme for its protection. That instrument declares what the legislature may not do. They may not transfer the functions of a local office to State officers. If an act of the legislature attempts to do that, presumptively it is a dangerous invasion of the home rule principle—certainly it is a prohibited one. It is a question of authority on the part of the legislature. Concededly, it would not be authorized to so transfer, by other acts, many other specified kinds of property. Concededly, the time would come when, to save to localities their home-rule rights, the courts must hold an act to be unconstitutional, that in itself attempts to do no more than this act does. In my judgment, both acts would be equally unauthorized.

It is suggested that so much of the "special franchise" as consists of the mere right to operate the tangible property in streets and public places has never heretofore been the subject of taxation, and that as to such new property the act in question, by depriving the local officers of the right to assess it, takes no right from them that they ever had before, and hence the principle of home rule is not invaded.

But it has been the duty of local assessors, ever since the office
809 existed, to assess all property in their district that was liable to taxation, and they were the sole and only officers upon whom such duty was imposed. The legislature from time to time, as new species of property have come into existence, has imposed the burden of taxation upon them; yet it did not need an act of the legislature to enable the assessors to assess such new property. That duty devolved upon them as soon as the property was declared taxable, by virtue of the long existing and well-recognized function of their office, and it is this very duty of assessing *all* the property in a locality upon which the legislature shall impose the obligation of paying a local tax, that the localities insist should be exercised by officers chosen by themselves. The functions of the office are

neither enlarged by an addition of property to the tax list, nor are they diminished by a removal of property from that list. Undoubtedly the legislature has the power to do either, but the functions of the assessors' office remain the same. The right and the duty of the assessors to assess whatever property in their district the legislature shall declare taxable for local purposes is the long-existing and assured function of that office which is sought to be preserved. Therefore, when the legislature deemed it wise to add to the taxable list the so-called "special franchise," the duty of assessing it devolved at once upon the local assessors. Its creation at once brought it within the scope of their official duties. By virtue of the functions of such office it became the duty of the assessors to assess it. It is true that the assessors have never heretofore had the opportunity of assessing such property. It has never been made taxable and so brought within the scope of their duties, but their right and duty to assess, now that it has been made taxable, has always existed, and by appointing another officer to perform that duty the act in question directly invades the functions of such office and attacks the principle of home rule.

Moreover, a considerable portion of the "special franchise" consists of tangible property that has long been assessed by the local officers. In the city of New York alone it amounts to something over seventy-six million dollars. All such property the law in question withdraws from the assessment by local assessors. It is argued that such property is a mere adjunct to the "franchise or right to use it," and that as the duty of assessing such right may be taken away, the duty of assessing its adjuncts must go with it. As said above, this is a question of power in the legislature, and I am unable to understand how that body gets the power to withdraw the tangible property from local assessment by merely requiring it to be assessed with the intangible right to use it. It cannot do indirectly what it may not do directly. It has no more power to add it to intangible property, and so withdraw it from local assessment than it has the power to withdraw it directly from such assessment.

I am forced to the conclusion that so much of the act in question as provides for the assessment of a special franchise by the State Board of Tax Commissioners is unconstitutional and void.

I am not unmindful of the importance of this question. The great interest which the taxpayers of the State take in this effort to subject to the burden of taxation a very large amount of property, which undoubtedly is of immense value to its owners, and the disappointment which will naturally accrue through its failure to them and to those legislators who evidently adopted this plan as the one best calculated to protect alike the owner and the public, is fully appreciated by me. But this court does not enter as a pioneer upon the consideration of this question. Every principle involved in it has been settled by the court of appeals, and we may do no more than recognize and enforce such principles in their application to this case. As stated above, in my judgment the decision in the *Raymond* case absolutely dominates this case.

811 *Opinion of Kellogg, J.*

KELLOGG, *J.*:

The question of the constitutionality of the so-called "special franchise" amendment of the general tax law is approached with no little hesitancy, owing to its importance; also to the fact that it has been discussed and determined by an able jurist, the learned referee appointed herein, and the further fact that the question is avowedly on its way to the court of appeals, where alone the question can be finally answered. Counsel on both sides have very ably and with evident conviction argued this question before us and insist upon the deliberate judgment of this court unbiased by what has gone before or what may come after, and we are therefore called upon to express our independent convictions and briefly state the grounds upon which they are based.

The learned referee has held that assessing property for the purpose of taxation under the general tax laws of the State is a local function and can be exercised only by local assessors elected by the electors of the locality or appointed by the local authorities. He says:

"The assessment of property for the purpose of taxation has always in this State been a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is entrenched in the constitution to secure to the people the home rule to which they had always been accustomed and of which the people of our race have always been tenacious."

This must mean that the legislature has not the power to take from the local assessors this function and settle it upon an individual or body appointed by the legislature. It is not a function which the legislature has power to change from a local to a State function.

812 This conclusion of the learned referee is supported by the court of appeals in *People v. Raymond* (37 N. Y., 428) and by every case in that court in which the question of assessment of property for purposes of general taxation has directly or indirectly arisen. The organization tax and franchise tax levied by the comptroller upon corporations are held not to be taxes, but charges by the State upon the right to do business in a corporate capacity, a privilege the State may give or take away. So with the inheritance tax; it is held not to be a tax upon property, but a charge upon the succession, also a right the State may give or take away. (*Matter of estate of Swift*, 137 N. Y., 77.) It has never been claimed that valuations made by the comptroller or by his appointees or by any appointee of the State in such cases, for the purpose of fixing the sum to be charged for the enjoyment of these State privileges, was a local function. The State has seen fit to base its claim against certain corporations upon a valuation of capital employed in the State. It might have demanded a share of its earnings instead, and it might, without val-

uation, have taken a share in kind of the property of a deceased person as the price of transmission of the remainder to the heir, devisee or legatee. I do not therefore see how much incidental valuations for special purposes have any bearing upon the question before us.

Speaking generally of the home rule which the constitution essays to protect, the courts in many instances have undertaken to define, distinguish and point out what is *not* a local function as contemplated by the constitution; but as to the matter of assessment of property for general taxation they have uniformly held that to be a local function. The class of cases in which the courts have held the function to be exercised not to be exclusively local are such as relate to the exercise of police powers, and as instances of these are *People v. Draper* (15 N. Y., 532), *People v.*
813 *Pinckney* (32 N. Y., 377), *Board of Health v. Heister* (37 N. Y., 661), *Board of Excise v. Barrie* (34 N. Y., 657), *Astor v. The Mayor* (62 N. Y., 567), *People ex rel. Kelmer v. McDonald* (69 N. Y., 362), *People ex rel. v. Cheritree* (6 T. & C., 473), *Haaloa v. The Supervisors of Westchester* (57 Barb., 383), *City of Syracuse v. Hubbard* (64 App. Div., 587), *The People ex rel. v. The Board of Supervisors of Oneida Co.* (170 N. Y., 105).

In these cases the court in every instance professed to see that the principle of home rule contemplated by the constitution was not involved for the reason that the function sought to be exercised was not local in such a sense as to deprive the State from its unlimited exercise. In some cases it is true that the prevailing opinion of the court conveys the impression that local self-government as a principle, so far as recognized by the constitution, is a sort of nebula with limitations as uncertain, unstable and elusive as the tail of a comet (*Matter of Allison, com. of jurors*, 172 N. Y., 421), but all, nevertheless, declare that the constitution does recognize the principle and protects it against legislative encroachment.

It will be of little worth to here state the process of court reasoning by which conclusions were in those cases arrived at. We are only concerned with the uniform finding of the court in each case that the function sought to be exercised by the State was not a local function and the home rule principle embedded in the constitution was in no manner or degree invaded. None of these cases excuses the conclusion arrived at on the ground that the invasion of the field protected by the constitution was slight or not substantial. None of them claims that there is a difference between a small invasion and a great one in determining whether an act of the legislature is constitutional or otherwise. If the theory of "substantial invasion" is the proper theory in determining whether or
814 not there has been an unlawful violation of the constitution, the courts might well have held in the *Brenner* case (*Matter of Brenner*, 170 N. Y., 185) that the act considered was constitutional because there was left to the home rule the power of appointment and election of so many other officers that the taking away of a single office was not a substantial infringement.

It seems to me that the question of the constitutionality of the act we are considering hinges wholly upon the question as to whether or not the assessment of property for general taxation is an exclusively local function. If it is conceded to be, or is determined to be an exclusively local function and, as said by the referee, is a "system of assessment entrenched in the constitution to secure to the people the home rule to which they have always been accustomed and of which the people of our race have always been tenacious," then it must be the duty of the courts, until the people shall change the organic law, to see that these secured rights are not unlawfully invaded. It matters not, it seems to me, how little or how great may be the invasion proposed. Every little violation of the constitution is as inexcusable as is a larger violation. Considerations of convenience or better service have no place in the discussion or in the determination of this question. If we were authorized to hew away the constitution every time it binds and so make it run in accord with the legislative idea of public needs we might then take into account the good and the bad which might result from the change.

The learned referee has found that the tangible property heretofore assessed by local assessors throughout the State amounts to $76,585,225. The assessment of this is, by the legislative amendment to the general tax law, taken from the local assessors and the function transferred to a State board. No one can deny that this is a
815 palpable violation of the constitution, at least in some degree. It may not be a very large invasion but it is a material invasion, for I assume that every invasion, if plainly an encroachment, however small it may be, is material to those who give heed to a constitutional inhibition. The excuse for transferring this power to assess the tangible property on, under and over the public streets and places, is based upon the claim that this property is inseverable from the franchise, the intangible property. That it is not inseverable for the purpose of valuation is plain. That is manifest from the findings of the referee who has ascertained from the testimony of the State board of assessors the value of the tangible and intangible separately. It is also plain from the approved method of assessment adopted by the State board, viz., appr-ising first the whole property of the corporation and deducting therefrom the value of all the tangible property of every name and kind owned by the corporation, estimated on the cost of reproduction, and taking the result as the net valuation of the intangible, or franchise. It is not inseverable either for the purposes of enforcing payment of the tax. The franchise may be sold without the tangible property on, under or over the streets. Its value without the tangible would be the value of both less the cost of reproduction of the tangible; so the State board of assessors have determined, and both are separately valuable. The tracks of a street railway are no more essential to a profitable use of the franchise than are the power houses which furnish the power and which are not assessed with the intangible property; both the tracks and the power houses

as well as the rolling stock may be replaced. The case cited (*People v. O'Brien*, 111 N. Y., 47) to show that "the franchises would be of no value without tangible property to operate them and so they are inseparable" was based upon *Gue v. Tide Water Canal Co.* (24
816 How. U. S., 257). That was a case where the sale of a canal by piecemeal was sought to be enjoined in equity. A levy had been made on the locks of the canal, the toll house and land surrounding the outlet locks, all essential to the uses of the canal. The court held that to sell a canal lock would destroy all value in the canal itself and would be of no value to the purchaser, hence the sale was enjoined. It is obvious that a canal so far differs from a street railway as to make the case cited wholly inapplicable. The tracks of a railway may be removed, but the lock of the canal could not be. There could be no replacement of the property sought to be sold appertaining to the canal, hence a sale would destroy the franchise. This cannot be the case as to any of the property contemplated to be assessed by the amendment of the tax law under the name of special franchise.

The assessment by a State board of the franchises themselves—the intangible property of a corporation as defined by the amended act—presents perhaps another question. This property is not new property coming to the locality but has always existed there though it has never been locally assessed. To assess this property judiciously or by the method adopted by the State board the local assessors in most cases would need to go beyond their precincts. The property can hardly be said to be localized. For instance a street surface railway, a telegraph, telephone or pipe line, which runs through several incorporated villages and on the highways of intervening towns, must possess a franchise from each municipality. The value of these franchises separately considered might be very little but the value combined might be very great. The right to run cars on the highways of a town could only be valuable as connected with the right to run through the other municipalities. These franchises therefore are only links in a chain. The chain may have great value but the links have no value except for their being component
817 parts of the chain itself. It is obvious that to give a proper value to any link the value of the entire chain must be first ascertained and then an approximate apportionment would not be difficult. But the value of the chain largely depends upon the earning capacity for the time being of the entire property of the corporation used to do the business which the franchises permit to be done, and the value of the chain of franchises, ascertained in the mode adopted by the board of assessors—and no better mode has been suggested—requires a valuation of the entire corporate assets and a separate valuation of all the tangible property in each municipality and elsewhere situated, and then by a process of elimination the value of all the franchises together may be determined. It is possible that this might be done by local assessors, but in doing it they would be exercising something more than the usual local function of their offices. The appr-isement by local assessors of property in

another municipality would, if permissable, be a function never before exercised. They could not be protected in so doing by any principle of home rule. And if this is what would be required of them I do not see how their local functions could be disturbed or diminished by the appointment of a State board to make this assessment. The property to be assessed is not in its nature localized in any one taxing precinct. It is not property over which the local assessor has ever exercised jurisdiction. In some cities and in some other municipalities it may be that the entire corporate property including its franchises are located within the municipal limits, but such cases make the exceptions rather than the rule.

I advise a reversal, and that the assessment be set aside, on the ground that the amendment to the general tax law creating a State board of assessors and giving them power to assess the tangible property on, under and over streets and public places is an invasion of the functions of local assessors and in this respect is a violation of the constitution.

818 *Opinion of Smith, J., Dissenting.*

SMITH, *J.*, dissenting:

The legislative act, the constitutional warrant for which is here challenged, was passed in May, 1899. By its provisions a new species of property was added to the property theretofore taxable by law. This new species of property was the franchise, right or permission granted by municipalities to use the public highways and public places within the State. This franchise, right or permission was defined by the statute to include the tangible property of the person, copartnership, association or corporation, the owner of the franchise itself, which was used upon the public way. It was provided that this tangible property should be taxed as a part of the special franchise; that the special franchise as thus defined should be assessed by the State Board of Tax Commissioners, and their assessment as certified should be entered by the assessors or other officers of the various localities in which said franchises existed in the proper column of the assessment roll. One of the grounds of the relator's challenge is that this act violates the home rule provision of the State constitution as found in section 2 of article 10 of the constitution of 1894. That provision of the constitution reads as follows: "* * * * All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as the legislature may direct."

819 The contention of the relator is that this constitutional provision is violated by giving to the State Board of Tax Commissioners the assessment, first, of the franchise, and second, of the tangible property in the street; which, by the act, is made a part of the special franchise subject to assessment by the State officers.

That the legislature might properly give to the State board the assessment of the franchise seems to me of undoubted right. The constitution provides that "all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as the legislature may direct." This provision is a clear index of the constitutional purpose to protect the localities in the home rule which existed at the time of the adoption of the constitution, and to that extent only. All offices thereafter created are to be filled as the legislature may direct. By this act, the legislature has in effect created a new office—a franchise tax assessor; and to the extent of the assessment of the franchise, with duties not existing at the time of the adoption of the constitution. These duties, too, are distinct from and independent of any then existing duties of local officers. An intangible franchise has never been the subject of assessment by local assessors. This is held by the referee below. See *People v. Barker*, 152 N. Y., 417; *People v. Com'r of Taxes*, 104 N. Y., 240. Most franchises are enjoyed in connection with franchises from adjoining municipalities which have a value in their union, the value of which separately, however, is uncertain and practically undeterminable except by arbitrary apportionment. To assess these franchises, access must be had to the books of the corporation and to other data which it would be difficult if not impracticable to give to the assessors of every tax district in which the franchise existed. The duty, therefore, of assessing these in-

820 tangible franchises, is, as I say, distinct from the duty of assessment of real and personal property. The fact that this franchise is, by the statute termed real estate, and that the local assessors were, at the time, empowered to assess all real and personal property within their tax district, does not affect the situation. Whether it be called real estate, personal property, or neither, is a mere matter of form. The intent of the legislature is plain to make taxable another species of property which had not theretofore been taxable, and to appoint State officers to assess the valuation of the same. But it is immaterial whether a new office has been created or new functions have been added to an old office. In either case existing home rule is not invaded by the assignment of such functions to legislative appointees. There is preserved to the locality every function possessed by it at the time of the adoption of the constitution. *People v. Pinckney*, 32 N. Y., 382; *City of Syracuse v. Hubbard*, 64 App. Div., 589. In my judgment, therefore, the right seems clear, both within the letter and within the spirit of the constitution to give to the State board of assessors the power to assess the intangible franchise. See *People v. Draper*, 15 N. Y., 532; *People v. Wells*, 172 N. Y., 421.

By this statute, however, the tangible property of the corporation

within the street, used in connection with the intangible franchise, is made a part of the special franchise which the State officers are empowered to assess. The constitutionality of this provision presents a more serious question. This tangible property amounts to upwards of ninety millions of dollars within the State. It has heretofore since its creation been assessed by the local assessors. It was so assessed at the time of the adoption of the constitution. By this act, this local function, existing at the time of the adoption of the constitution, has been taken away from the local officers and given
821 to the State board. By what rule of construction can this be justified?

Chapter 564 of the Laws of 1865, conferred upon the commissioners of Central park, appointed by the central power, the exclusive care, management and control of portions of Sixth avenue and certain other streets in the city of New York for the purpose of regulating, grading, and otherwise improving the same. In *Astor v. The Mayor*, 62 N. Y., 567, that act was questioned as violating the home rule provision of the constitution, by transferring to officers appointed by the central power, functions theretofore always discharged by local officers elected or appointed in the locality. This act was held constitutional and the rule as stated in the headnote is as follows: "The constitutional provision does not prohibit the legislature from clothing officers appointed by it for the carrying out of a public improvement with power to perform acts which have an especial relation to and connection with such improvement, simply because the power to perform such acts was, at the time, of the adoption of the constitution, vested in local officers elected by the people." In discussing that act, Justice Miller, writing for the court, says: "It would be carrying the doctrine of non-interference with local officers far beyond any reported case to hold that in no case whatever could any of the powers existing in a local officer at the time of the adoption of the constitution be taken away without violating the provision cited." In *People v. Draper*, 15 N. Y., p. 543, Denio, J., in writing of this provision of the constitution says: "If we were to establish the principle that the legislature can never reduce the administrative authority of counties, cities and towns; can never resume in favor of the central power any portion of the jurisdiction of those local divisions, or change the partition of it among them, as it existed when the constitution was adopted, we should, I think, make an impracticable government."

822 The intimate relation of the tangible property in the street to the intangible property to which it is an incident is seen at a glance. For many purposes they are legally inseparable. In *People v. O'Brien*, 111 N. Y., 471, the court in its opinion, says: "In the former class has been held that at common law real estate acquired for the use of a canal company could not be sold on execution against the corporation separate from its franchise so as to destroy or impair the value of such franchise. *Gue v. Tide Water Canal Co.*, 24 How. U. S., 257. And by parity of reasoning, it must follow that the tracks of a railroad company and the franchise of main-

taining and operating its road in a public street are equally inseparable in the absence of express legislative authority providing for the same." In *Syracuse Water Co. v. City of Syracuse*, 116 N. Y., 182, the opinion reads: "The corporate rights and the corporeal means of their exercise therefore constitutes, as it were, a single body, consisting of property corporeal and incorporeal. Both the power and the means of exercising it are essentially united and upon such union is dependent the enjoyment as well as the practical value of the franchise." Citing *People v. O'Brien* and *Gue v. Tide Water Canal Co.* In the case of *Gue v. Tide Water Canal Co.*, upon which both of these opinions rest, a creditor of a canal company had levied an execution upon a house and lot, some locks in the canal, and some adjoining building lots, all the property of the canal company and necessary for the conduct of its business. It was there held, that because a sale of the tangible property without the franchise would result in a sacrifice of the property, equity would enjoin the sale in behalf of creditors and stockholders of the corporation and leave the creditor to an equitable action for a sale of the whole property, including the franchise, upon which the proceeds could be equitably distributed. This case, and the authorities based thereon, are distinguished by Justice Kellogg in
823 his opinion, in which he says: "It is obvious that a canal so far differs from a street railway as to make the case cited wholly inapplicable. The tracks of a railway may be removed but the lock of a canal could not be; there could be no replacement of the property sought to be sold appertaining to the canal, hence a sale would destroy the franchise. This cannot be the case as to any of the property contemplated by the amendment of the tax law under the name of special franchise." This distinction of Justice Kellogg is clearly overborne by the authorities. The principal of the case of *Gue v. Tide Water Canal Company* has been applied by the courts with equal force to the tracks and equipment of a railroad which cannot be sold separately from the franchise itself. See *Hammock v. Loan and Trust Co.*, 105 U. S. 77; *Buncombe County Commissioners v. Tommey*, 115 U. S., 122; *Kittell v. Augusta T. & G. R. Co.*, 65 Fed. Rep., 861. In that case the opinion in part reads: "It further appears that said sale covers all the construction plant, tools and construction material belonging to said corporation. In such circumstances, a creditor cannot dissever from the franchise property essential to its useful existence." *In National Foundry and Pipe Works v. Oconto Water Co.*, 52 Fed. Rep., 43, where a specific lien was given to a materialman upon a plant and franchise of a water company, it was held that they "cannot be separated by judicial sale because of their public use." The judge, in writing the opinion, says: "The structure here is of the class of which canals, street railways, railroads, telegraph, telephone, electric light and gas plants are examples, *and can only be dealt with as an entirety.*"

But it is urged that the tangible and intangible are not inseparable for the purpose of assessment. Possibly they are not absolutely inseparable.

As shown by the evidence the value of the intangible franchise must be determined by taking the value of the whole prop-
824 erty, tangible and intangible, and deducting therefrom the value of the tangible. Thus the determination of the value of the tangible property is a prerequisite to the valuation of the intangible. Their values and use depend upon each other. Those values thus interdependent are given to the State board to determine. They are therefore reasonably connected for the purpose of assessment and taxation. And this is all that is necessary to authorize the legislature to attach the tangible to the intangible property for this purpose.

In the *Astor* case, above cited, the several avenues, jurisdiction of which was taken from the local assessors and given to the State officers, were outside of Central park, and not within the jurisdiction of the park commissioners. These avenues might have been left to the local officers to improve. There was no absolute necessity that they be transferred to the park commissioners who were appointed by the central power. Nevertheless, by reason of their intimate relation and connection with the park and with the scheme of park improvement, the legislature was held authorized to take from the local officers functions which had theretofore been local functions, and transfer them to these State officers. If, as part of the park improvement, the legislature had thought best to give to the park commissioners the permanent control of the streets surrounding the park, I apprehend that the right to do so would be recognized by the courts as one reasonably connected with and incidental to the scheme of park improvement which the legislature was authorized to adopt and execute.

Nor do I find any authorities which conflict with the conclusion reached. The learned presiding justice deems this case controlled by the case of *People v. Raymond*, in 37 N. Y., 428. That case simply holds that the legislature has no right to abolish the office of commissioner of taxes and assessment of the city and county of New
825 York, and to transfer the duties of that office to one appointed by State authority. It does not hold that his every function is inviolate, and that no part of his duties may be transferred to State officers if such be reasonably necessary as incidental to some plan which the legislature lawfully seeks to accomplish. The office of commissioner of highways cannot be abolished and his duties transferred to an officer appointed by the State. That office, equally with the office of commissioner of taxes of the city of New York, is one within the protection of the constitution. Nevertheless, it has been frequently held that some of the functions of the office of commissioner of highways may be taken from it and exercised by the State; and in the *Astor* case, an act taking from him certain functions was justified because they were incidental to the State plan of park improvement in the city of New York.

In the referee's opinion are cited many instances where certain functions are taken from local officers while the offices themselves are concededly protected under the constitution from destruction by the legislature.

The learned referee, before whom this case was originally tried, has admonished us of certain rules of construction by which we must be guided in the determination of this question. He says in his opinion: "There is also a rule many times announced by the judges that the legislative will is not to be thwarted as in conflict *with the constitution unless such conflict is clear and undoubted*; and that whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution and give it the force of law, such construction should be adopted. The legislature has supreme legislative power except as such power is limited in the Federal or State constitutions; and we must be able to point to some unmistakable constitutional limitation before such power can
826 be curtailed. A further rule must, however, be observed, that a thing within the intent of the constitution, if that intent can be gathered from the instrument itself considered in all its parts or from the history connected with it of which a court can take notice, is, for all purposes, to be regarded as within its words and terms, and that the plain purpose of the constitution will not be thwarted by a too close adherence to its letter."

Guided by these rules of construction, we must not lose sight of the fact that what is protected by the constitution is the local office and not each separate function thereof. It may be that the legislature would not have power arbitrarily to take from a local officer some of his regular functions, however small. The argument is not without force that a slight arbitrary invasion might be followed by another until the substance of the office is gradually taken from the locality. Where, however, the functions of a local officer are left substantially unimpaired, to take from him certain of his functions and give them to State officers entrusted with the execution of a lawful State purpose, where the transfer is of *functions reasonably incidental to the fulfillment of that purpose*, in no way offends as against the constitutional prohibition. To hold otherwise and to rule that no single function may ever be invaded would materially cripple the power of the State in the institution of public improvements, and would, in my judgment, be a limitation never intended by the framers of the constitution. The legislature has transferred to State authorities the capital execution of criminals. Those functions have been taken from local constitutional officers and given to State officers. To question the constitutional right to accomplish this purpose would be generally recognized as quibbling over the constitutional restriction. The constitution should
827 receive such liberal construction as will protect the people in the rights intended to be reserved, and at the same time render possible the growth and prosperity of the State. The limitation which the majority of the court have here found is at the most an implied limitation, unwarranted, as I think, either by authority or by any reasonable conception of the intent of the framers of the constitution. I am impressed with the conviction that to hold this law invalid is to pervert the will of the people of the State, as written in their fundamental law.

828 *Opinion of Chester, J., Dissenting.*

CHESTER, *J.*, dissenting:

The special franchise tax law (so called) chapter 712, Laws 1899, amended the tax law (chapter 908, Laws 1896) so that the terms "land," "real estate" and "real property," as used in the tax law, should include not only all surface, underground or elevated railroads, but "the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places;" and also the "value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon or through any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes." The amendment further provided that, "a franchise right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a 'special franchise.' A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place, or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise." It was also provided in the amendatory act that, "the State Board of Tax Commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, village or tax district." The amendment also required the board to return its valuation to the local authorities to be included in the local assessment rolls, and required the local authorities to enter the valuation of the special franchises, so fixed by the State board, in the proper place in the local assessment rolls.

829 The act did not interfere with the office of assessors or other local officers charged with the duty of making assessments. The only power taken from such local officers was the power to assess the tangible property in the streets which was defined by the law to be, and to be taxed as, a part of the special franchise.

The most important question in the case is whether the legislature had the power under the constitution of the State to take this function from the local assessors. That the legislature had the power to commit to the State Board of Tax Commissioners the function of assessing the intangible property constituting a part of the special franchises is not, I think, open to serious question. Such intangible property was made taxable for the first time in this State by the amendment and the legislature had the undoubted right to commit its valuation for the purposes of taxation to any agency it might choose without the impairment of any functions of local officers, because no local officer ever had any power or authority over property of that character for the purposes of taxation.

As to whether or not the legislature could commit to the State Board of Tax Commissioners the power to value the tangible property in the streets forming a part of these special franchises is a more serious matter. My examination of this question has led me to a different conclusion from that reached by some of my associates and I will, as briefly as I may, state the reasons for my conclusion.

The home rule provisions of the State constitution which is brought in question here is found in section 2 of article X, and is as follows:

"All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided
830 for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct."

The office of assessor is not mentioned in this section, nor are the functions of any local officer defined therein. While this section expressly secures to the localities the selection of their local officers it does not in express terms protect the functions of such officers from legislative or State interference. But the appellant's counsel insist, and no doubt rightly, that we may read into the constitution by implication from the history of the State at or prior to the time of the adoption of the constitution that the assessment of property for the purpose of taxation is a local function. So far I may agree with them and find ample authority in the decisions of the courts for so doing. But when they insist that under the implied provisions of the constitution such assessment is *exclusively* a local function in the sense that the State cannot interfere with it or confer upon officers appointed by State authority the function of valuing tangible property in the streets constituting part of a special franchise, notwithstanding such property has heretofore been assessed by local assessors, I find myself unable to yield my assent.

While an act of the legislature must stand the test as to whether its provisions are counter to the clearly implied, as well as to the express, provisions of the constitution, yet I cannot conceive it to be the duty of the court to aid in reading into the fundamental law matters of doubtful or uncertain implication in order thereby to effect the condemnation of an otherwise valid act.

831 In considering this question some elementary principles may first be alluded to. The legislative power is absolute and unlimited, except as restrained by the State or Federal Constitution. (*Bank of Chenango v. Brown*, 26 N. Y., 467; *People v. Flagg*, 46 N. Y., 401; *Lawton v. Steele*, 119 N. Y., 232; *Railroad Co. v. County of Otoe*, 16 Wall. U. S., 667.) The power to tax is inherent in government and

is a legislative power limited only by constitutional provisions. (*Town of Guilford v. Supervisors of Chenango Co.*, 13 N. Y., 143; *Clark v. City of Rochester*, 24 Barb., 446.) The security for the abuse of this power is to be found in the responsibility of the members of the legislature to their constituents and not in the courts. (*People v. Mayor of Brooklyn*, 4 N. Y., 426.) Cities, counties and towns are but the instrumentalities for the convenient administration of local government; upon them, subject to constitutional limitations, the legislature may confer the power to tax to the extent necessary to good government and the imposition of a tax by cities, counties or towns for their support is as much an exercise of the taxing power of the State as a tax imposed directly by the State. (25 Am. & Eng. Enc. of Law, 80, 1st ed.) The power to assess is but an incident of the power to tax. The function of assessing for the purpose of taxation is a governmental agency for the proper division of the burdens of taxing and is but one of the elements in rendering the power of taxation effective.

In the *Town of Guilford v. Supervisors of Chenango, supra*, it was said, "Our State government is an independent existence, representing the sovereignty of the people. The power of the legislature is the power of that sovereignty, and is supreme in all respects, and unlimited in all matters pertaining to legitimate legislation, except in those instances where the people have, in their funda-
832 mental law, limited or restricted it. Taxation is indisputably a legislative power. The constitution of this State will be searched in vain for any clause which contains any restriction or limitation on the taxing power of the legislature."

If the legislature possesses such power with respect to taxation I can see no reason why with respect to a function which is but a part of the governmental machinery in carrying into effect the laws relating to taxation the legislature may not lawfully provide, as has been done by the amendment in question, that the State Board of Tax Commissioners may value the tangible property in the streets as a portion of the special franchises made taxable by the amendment.

The State has a direct interest in local assessments, for upon these assessments State as well as local taxes are paid. It has an indirect interest in them so far as they are made the basis of local taxation, because of its regard for the efficiency of local government and for the well being of all the municipalities which go to make up the State.

At the time of the adoption of the earlier constitutions, when it is claimed that the principle of local assessments became a part of our governmental system, there was not a railroad track, a telegraph line, a gas main or an electrical subway in existence. The right to assess and tax these various kinds of property in the streets has from time to time, and mostly in comparatively recent years, been conferred upon the local authorities by the legislature. If the legislature can increase the powers and functions of the assessors, as it has done repeatedly, why may it not take from these powers and func-

tions, at least to the extent of that which it has given. If this tangible property in the streets had always been taxable there would be more force in the contention that the local assessors had a
833 constitutional right to value it for taxation, but the right to assess it at all has been given since the adoption of the earlier constitutions and this right is all that has been withdrawn by the act in question.

The constitution has not stood in the way of the withdrawal by the State of various functions from many local officers other than assessors and conferring such functions upon officers appointed by central or State authority. This principle has been sanctioned by the court of appeals in many cases. It was done as to police officers in *People v. Draper*, 15 N. Y., 532, and *People v. Shepard*, 36 N. Y., 285; as to firemen in *People v. Pinckney*, 32 N. Y., 377; as to commissioners of excise in *Board of Excise v. Barrie*, 34 N. Y., 657; as to health officers in *Board of Health v. Heister*, 37 N. Y., 661; as to officers having supervision of street improvements in *Astor v. The Mayor, etc., of New York*, 62 N. Y., 567; as to commissioners of highways in *People ex rel. Kilmer v. McDonald*, 69 N. Y., 362, and as to boards of supervisors in the erection of public buildings in *People ex rel. Commissioners, etc., v. Supervisors of Oneida Co.*, 170 N. Y., 105.

But it is said that the decisions in these cases and in others of analagous character, were justified in the exercise of the police power of the State, and not otherwise. The court, however, failed to put its decision in most of these cases on that ground, nor did it give that question any prominence in any of them. Other sufficient reasons were found for the conclusions reached.

While it is entirely correct to say that the State has a great interest in maintaining good order through an efficient police force, in the protection of property and lives by well conducted fire departments, in promoting the public health, in the regulation of the liquor traffic, in the maintenance of good roads and in other
834 public improvements, yet none of these matters are of greater concern to the State than the power to exist, which depends upon the right in the legislature to levy taxes and, as incidental thereto, to have some power concerning assessments for that purpose.

The cases which are cited to support a contrary doctrine are cases where the legislature attempted to abolish local *offices* in the face of the express terms of the constitution, and confer the functions of such officers upon officers of State selection. The case of *The People v. Raymond*, 37 N. Y., 428, is one of these cases.

The appellant relies largely upon that case for its contention that the assessment of property for the purpose of taxation is exclusively a local function. That was an action to determine the title of the defendant to the office of commissioner of taxes and assessments of the city and county of New York and the only question in the case was as to whether or not an act of the legislature under which the defendant was appointed to that office by the governor and senate violated the home rule provisions of the constitution and it was held

that it did, and that the legislature could not create a new office and vest the appointment in a central or State authority when the duties of the office were those of a former county or city officer made elective by the constitution. While it was said in that case that "there is no question but that the office in question is exclusively a city office," it was not there decided, nor could it have been, for the question was not up, that the function of assessing property for the purpose of taxation was exclusively a local function. The case is therefore not an authority for that proposition, nor do I know of any case that is. I think the question is an open one and must be decided in this case as a new proposition. That the *Raymond* case is not conclusive on this question, it seems
835 to me, is clearly indicated by the court of appeals in the later case of *Astor v. The Mayor*, *supra*, where it was held that a law that took from local officers and conferred upon the commissioners of Central park, who were officers appointed by the legislature, the exclusive care, management and control for the purpose of regulating, grading and improving certain streets in the city of New York, was not unconstitutional, and where it was stated in the opinion of the court that, "it would be carrying the doctrine of non-interference with local officers far beyond any reported case, to hold that in no case whatever could any of the powers existing in a local officer, at the time of the adoption of the constitution, be taken away without violating the provision cited."

The intangible property, constituting a part of these special franchises, is made taxable by the amendment in question for the first time. It is of very large value. It is so closely related to and so inseparably connected with the tangible property in the streets, constituting a part of the special franchises, that it would be very difficult, if not impracticable to value the intangible, separate and distinct from the tangible property. (*People v. O'Brien*, 111 N. Y., 1.) The State board has not so valued it in this case and this court has held in an unreported case that a provision in a writ of *certiorari* requiring that board to state the values upon the tangible and intangible property separately was not justified under the law.

Nor is it practicable for special franchises, in many instances, to be valued by local assessors without extending their functions and jurisdiction beyond their tax districts, for the reason that such franchises frequently cover property extending into several tax districts and the property in one district would have little value
836 when disconnected with the property in the other districts but would have great value when taken as a part of the whole. It is also a kind of property requiring expert knowledge on the part of those who are to value it and knowledge which few local assessors possess.

To hold that the legislature cannot commit to a State authority the duty of valuing for the purpose of taxation tangible property in the streets to the extent permitted by the amendment in question and under the circumstances existing here, requires, in my opinion,

an altogether too strict and illiberal a construction of the constitution.

I think the legislature had the right not only to subject the large amount of intangible property existing as a part of these special franchises to the taxing power of the State but also to provide, as it did, in view of the changed conditions arising from the advancement and progress of our people over those which formerly existed, for the assessment of this intangible and tangible property together, by State officers, and that in so doing it has still left to the localities as large a measure of home rule as they enjoyed in this respect, when the local function of assessing property for taxation became part of our system.

So far reference has been had to the validity of the amendment under the State constitution. With reference to its validity under the Federal Constitution and to all the other questions discussed by the learned referee in the various opinions written by him, I agree with his reasoning and also with his conclusion and that of the special term, that the amendment is a valid exercise of legislative power.

I think the order should be affirmed with costs.

837 *Notice of Appeal.*

Supreme Court, Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of Central Crosstown Railroad Company, Respondent,
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. Stearns, Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.

SIRS: You will please take notice that the above named appellants, George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, together constituting the State board of tax commissioners of the State of New York, hereby appeal to the court of appeals of the State of New York from the final order of the appellate division of the supreme court, third department, entered in the office of the clerk of the county of Albany, on the 20th day of February, 1903, and from the whole of said order, except that part thereof which affirms the order of the special term herein upon the facts.

Dated February 21, 1903.

Yours, etc.,
JOHN CUNNEEN,
Attorney-General,
Attorney for Appellants, Capitol, Albany, N. Y.

To the clerk of the county of Albany and to George S. Bixby, attorney for relator-respondent.

838 *Stipulation.*

Court of Appeals, State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The Central Crosstown Railroad Company, Respondent,
against
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Tax Commissioners, Composing the State Board of Tax Commissioners, Appellants.

It is hereby stipulated under section 3301 of the Code of Civil Procedure that the foregoing are true and correct copies of all of the papers and evidence upon which the court below acted in making the order on file in the office of the clerk of Albany county and of all the evidence and papers upon appeal herein upon which this proceeding was heard in the appellate division of the supreme court, the memorandum of decision by the appellate division, the order of the appellate division, the opinion of Parker, P. J., and Kellogg, Smith and Chester, JJ., and the notice of appeal to the court of appeals, and certification thereof as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated March 1, 1903.

JOHN CUNNEEN,
Attorney-General, Attorney for Appellants.
GEORGE S. BIXBY,
Attorney for Relator-Respondent.

839 At a special term of the supreme court of the State of New York, held at the court house in the city of Albany, N. Y., on the 20 day of June, 1903.

Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company
vs.
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Constituting the State Board of Tax Commissioners of the State of New York.

This cause having been brought on upon the remittitur herein, sent down from the court of appeals, and now filed with this court, by which remittitur it appears that an appeal was taken by the defendants herein, from the order of the appellate division of this court to the said court of appeals, and that upon such appeal the said order of the appellate division of this court was reversed, and the order of the special term herein affirmed by such court, with costs, and that the record of proceedings had been directed by said

court of appeals to be remitted to this court, and this court directed to enforce the said judgment of the court of appeals, according to law,

840 Now, therefore, on motion of John Cunneen, attorney general, attorney for the respondents,

It is ordered and adjudged, that the judgment of the said court of appeals be and the same hereby is made the judgment of this court; and that the respondents George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, as constituting the State board of tax commissioners of the State of New York, have execution against The Central Crosstown Railroad Company, relator, for their costs, when adjusted by the clerk, and inserted in this judgment, and that this order or judgment be annexed to the judgment-roll.

Enter.

D. CADY HERRICK,
Jus. Sup. Ct.

841 [Endorsed:] Supreme court. People *ex rel.* Central Crosstown Railroad Company, *vs.* George E. Priest, *et al.*, constituting the State board of tax commissioners. Original. Order. John Cunneen, attorney-general, capitol, Albany, N. Y. Filed Albany county, N. Y. Jun- 22 2.19 p. m. 1903 Clerk's office.

842 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company
vs.
GEORGE E. PRIEST, J. EDGAR LEAYCRAFT, and LESTER F. STEARNS, Constituting the State Board of Tax Commissioners of the State of New York.

An order in this proceeding in favor of the respondents and against the relator having been made by the special term of this court on the 15th day of July, 1902, and duly entered in the office of the clerk of the county of Albany on said date, upon the report of a referee, reducing the assessment of the special franchise of the relator, as it appears upon the assessment-roll of the city of New York for the year 1900, from the sum of five hundred eighty-five thousand, six hundred and ninety-three dollars, to the sum of three hundred ninety-two thousand, four hundred fourteen and 31/100 dollars, and confirming the assessment of said special franchise, as so corrected and reduced, and the relator having appealed from said order to the appellate division of this court for the third department, and the said order having been affirmed upon the facts and reversed upon the law by the appellate division of this court aforesaid, and the order of reversal thereon having been rendered on the 6th day of January, 1903, and the respondents having appealed therefrom to the court of appeals, and the

said court of appeals have sent hither its remittitur, filed herein on the first day of May, 1903, by which it appears that the
843 said court of appeals has reversed the order of the appellate division herein, and affirmed that of the special term, with costs, and has given judgment accordingly, and has remitted the judgment of the said court of appeals to this court, to be enforced according to law, and this court having by an order entered herein the 22 day of June, 1903, ordered that said judgment be made the judgment of this court, and the respondents' costs having been adjusted at the sum of three hundred eighty-three and 75/100 dollars,

Now, on motion of John Cunneen, attorney general, attorney for the respondents,

It is adjudged, that the judgment of the said court of appeals be and the same is hereby made the judgment of this court, and

It is further adjudged, that the respondents George E. Priest, J. Edgar Leaycraft and Lester F. Stearns, constituting the State board of tax commissioners of the State of New York, recover of the relator, The Central Crosstown Railroad Company, the sum of three hundred eighty-three and 75/100 dollars, their costs, as adjusted herein, and that they have execution therefor.

JOHN FRANEY, *Clerk.*

Dated June 22nd, 1903.

844 [Endorsed:] B. 79 page 445. Supreme court. People *ex rel.* The Central Crosstown Railroad Company, *vs.* George E. Priest, *et al.*, constituting the State board of tax commissioners. Original. Judgment. John Cunneen, attorney-general, capitol. Albany, N. Y. Filed Albany county, N. Y. Jun- 22 2.19 p. m. 1903 Clerk's office.

845 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of New York on a remittitur from the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had, before you, or some of you, between The People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff-respondent, and The State Board of Tax Commissioners, defendant-appellant, wherein was drawn in question the validity of a statute of and an authority exercised under said State on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened to the great damage of the said People of the State of New York *ex rel.* Central Crosstown Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and

speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, within thirty days from the date hereof, in the said Supreme Court, that, the record, and proceedings aforesaid being inspected, the said Supreme Court
846 may cause further to be done therein to correct that error *which* of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 27th day of June in the year of our Lord one thousand nine hundred and three.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE,
Clerk of the Circuit Court of the United States
for the North. District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by
R. W. PECKHAM,
Associate Justice of the United States Supreme Court.

847 [Endorsed:] Supreme Court of the United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error. Original Writ of error. George S. Bixby, att'y for plaintiff in error, 71 Broadway, borough of Manhattan, New York city, N. Y. Filed Albany county, N. Y. Jun 29 11.36 a. m. 1903 Clerk's office.

848 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CENTRAL CROSSTOWN Railroad Company, Plaintiff in Error,
against
STATE BOARD OF TAX COMMISSIONERS, Defendant in Error.

Petition for Writ of Error.

Now comes The Central Crosstown Railroad Company, the above named relator, by George S. Bixby, its attorney, and says that on the 28th day of April, A. D. 1903, the court of appeals of the State of New York made and entered a final order and judgment herein, in favor of The State Board of Tax Commissioners, defendant in error above named, and against The People of the State of New York, *ex rel.* Central Crosstown Railroad Company, plaintiff in error above named, and afterwards, and on the 22nd day of

June A. D. 1903, the records and proceedings in said cause having been remitted to the supreme court of the State of New York in and for Albany county, said final order and judgment of the court of appeals were made and entered as the final order and judgment of said supreme court, in which final order and judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of the said relator, all of which will more in detail appear from the assignment of errors which is filed with this petition.

The said court of appeals of the State of New York is the
849 highest court of the said State of New York in which a decision in this cause could be had.

Wherefore, your petitioner prays that a writ of error may issue in this behalf from the Supreme Court of the United States to the supreme court of the State of New York for the correction of the errors and reversal of the judgment so complained of; that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States, that said writ of error operate as a supersedeas, that the amount of security which the petitioner shall give and furnish on said writ of error may be fixed, and that upon the giving of such security, all further proceedings in said court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Dated the 26th day of June, 1903.

GEORGE S. BIXBY,
Attorney for Petitioner.

The writ of error as prayed for in the foregoing petition is hereby allowed, and the bond is fixed at the sum of $1000.

Dated the 26 day of June, A. D., 1903.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

850 [Endorsed:] Supreme Court of the United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error, Original Petition for writ of error. George S. Bixby, att'y for plaintiff in error, 71 Broadway, borough of Manhattan, New York city, N. Y. Filed Albany county, N. Y., Jun- 29 11.36 a. m., 1903 Clerk's office.

851 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CENTRAL CROSSTOWN Railroad Company, Plaintiff in Error,
against
STATE BOARD OF TAX COMMISSIONERS, Defendant in Error.

Assignment of Errors.

Now comes The Central Crosstown Railroad Company, the above named relator, by George S. Bixby, its attorney, and, in connection with the petition for a writ of error filed herewith, says that in the records and proceedings in this cause and in the final order and judgment made and entered herein on the 22nd day of June, A. D. 1903, by the supreme court of the State of New York, on a remittitur from the court of appeals of the State of New York, there is manifest error in this, to wit:

I.

Error in declining to hold that the act of the legislature of the State of New York, approved May 26th, 1899, (ch. 712, L. 1899), entitled "An act to amend the tax law, in relation to the taxation of public franchises as real property," in so far as it authorizes the assessment imposed by the State Board of Tax Commissioners on March 20, 1900, upon the franchises of The Central Crosstown Railroad Company, relator above named, deprives said relator of its property without due process of law, in contravention of the fourteenth amendment of the Constitution of the United States.

852 II.

Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, denies to said relator the equal protection of the laws, in contravention of the fourteenth amendment to the Constitution of the United States.

III.

Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, impairs the obligations of contracts, in contravention of section 10, article I. of the Constitution of the United States.

Dated the 26th day of June, 1903.

GEORGE S. BIXBY,
Attorney for Petitioner.

853 [Endorsed:] Supreme Court of the United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commis-

sioners, defendant in error. Original. Assignment of errors. George S. Bixby, att'y for plaintiff in error, 71 Broadway, borough of Manhattan, New York city, N. Y. Filed Albany county, N. Y. Jun- 29, 11.36 a. m., 1903 Clerk's office.

854 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State Board of Tax Commissioners and John Cunneen, attorney general of the State of New York, its attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, for the county of Albany, in an action wherein The People of the State of New York *ex rel.* Central Crosstown Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. W. Peckham associate justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Copy of the above citation received by me at the office of the attorney-general of the State of New York, this 29 day of June, A. D. 1903.

JOHN CUNNEEN,
Attorney-General.

855 [Endorsed:] Supreme Court of the United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error. Original Citation. George S. Bixby, att'y for plaintiff in error, 71 Broadway, borough of Manhattan, New York city. Filed Albany county, N. Y. Jun- 29 1.58 p. m. 1903 Clerk's office.

856 *Bond on Writ of Error.*

Know all men by these presents, that we, The Central Crosstown Railroad Company, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the State Board of Tax Commissioners in the full and just sum of one thousand dollars ($1,000.), to be

paid to the said State Board of Tax Commissioners, its successors and assigns, to which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, by these presents.

Sealed with our seals, and dated the 23rd day of June, in the year of our Lord, nineteen hundred and three.

Whereas, lately in the supreme court of the State of New York, in a suit pending in said court between said People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff-respondent, and said State Board of Tax Commissioners, defendant-appellant, a judgment was rendered on a remittitur from the court of appeals of the State of New York against said People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff-respondent, in favor of said State Board of Tax Commissioners, defendant-appellant, and said plaintiff-respondent having obtained from a justice of the Supreme Court of the United States a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse said judgment in the aforesaid suit, and a citation directed to said State Board of Tax Commissioners, citing and admonishing them to be and appear at a Supreme Court of the
857 United States, to be holden at the city of Washington, District of Columbia, within thirty days from date thereof.

Now, the condition of the above obligation is such, that if the said Central Crosstown Railroad Company, a corporation as aforesaid, shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

[CORPORATE SEAL.]
CENTRAL CROSSTOWN RAILROAD COMPANY,
By JOHN BEAVER,
Secretary and Treasurer.

[CORPORATE SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HENRY B. PLATT, *Vice-President.*

Attest: JAMES R. KINGSLEY, *Attorney-in-fact.*

Sealed and delivered in the presence of:
HENRY P. MOLLOY.

STATE OF NEW YORK, }
County of New York, } *ss:*

On this 23rd day of June, 1903, before me personally came John Beaver to me known, who, being by me duly sworn, did
858 depose and say that he resided in New York city, Manhattan borough that he is the secretary & treasurer of the Central Crosstown Railroad Company, the corporation described in and

which executed the above instrument, that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

[NOTARIAL SEAL.] WALTER N. GRIMSHAW,
Notary Public, Kings Co. (105).

Certificate filed in New York county.

859 STATE OF NEW YORK, } ss:
County of New York, }

On the 23rd day of June, in the year 1903 before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he was the vice-president of the Fidelity and Deposit Company of Maryland, the corporation described in, and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, of chapter 720, of the Session Laws of the State of New York for the Year 1893. And the said Henry B. Platt further said that he was acquainted with James R. Kingsley, and knew him to be the attorney-in-fact of said company; that the signature of the said James R. Kingsley, subscribed to the within instrument, was in the genuine handwriting of the said James R. Kingsley, and was subscribed thereto by like order of the board of directors, and in the presence of him the said Henry B. Platt.

ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the board of directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the company, in the city of Baltimore, State of Maryland, on the sixth day of March, 1901, on motion, it was unanimously

"*Resolved*, That in pursuance of section eight hundred and eleven "of the Code of Civil Procedure of the State of New York, Henry B. "Platt, vice-president, or George Sewell Bonner, attorney, or Frank H. "Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood and "James R. Kingsley, attorneys-in-fact of this company, in the State "of New York, be, and each of them is, hereby authorized and em"powered to sign, execute and deliver any and all bonds or under"takings for or on behalf of this company, and to attach thereto the "seal of the corporation, the same to be attested by the said George "Sewell Bonner, attorney of the company or by either one of the "other persons above named, as occasion may require."

COUNTY OF NEW YORK, *ss.:*

I, James R. Kingsley, attorney-in-fact, of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original resolution. Given under my hand and the seal of *the company, at the city of* New York, this 23rd day of June, 1903.

JAMES R. KINGSLEY,
Attorney-in-fact.

Fidelity and Deposit Company of Maryland.

Statement, December 31st, 1902.

Resources.		*Liabilities.*	
Real estate	$670,000 00	Capital stock	$2,000,000 00
Stocks and bonds	2,723,100 00	Surplus and undivided profits	2,876,233 57
Railroad bonds	2,070,600 00	Premium reserve	717,297 87
Net premiums due	102,807 25	Claims in process of adjustment	31,012 45
Cash in bank, etc	235,058 63	Claims reported	166,021 99
	$5,790,565 88		$5,790,565 88

STATE OF NEW YORK, }
County of New York, } *ss.:*

James R. Kingsley, being duly sworn, says that he is the attorney-in-fact of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of December 31st, 1902, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 23rd day of June, 1903.

ERNEST L. HICKS,
Notary Public, New York County.

The foregoing bond and surety is hereby approved this 26 day of June A. D. 1903.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

860 [Endorsed:] Supreme Court of the United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error. Copy Bond on writ of error. George S. Bixby, att'y for plaintiff in error, 71 Broadway, borough of Manhattan, New York city, N. Y.

861 STATE OF NEW YORK, }
County of Albany, } ss:

I, John Franey, clerk of said county and also clerk of the supreme court of State of New York, held therein, do hereby certify that the annexed record of papers on appeal to the court of *appeals of said* State, remittitur issued by and from said court of appeals, the order of the supreme court pursuant to the said remittitur and the judgment in pursuance of said order thereon, are the originals thereof, entered and filed in this office; that attached thereto are the writ of error with allowance thereon; the petition for said writ with allowance thereof and fixing amount of security therefor, made thereon; the citation with acceptance of service thereof; assignment of errors, and the same are the originals thereof; and a copy of the bond on writ of error, which I have compared with the original thereof on file in this office and I find the same to be a true copy of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this 29 day of June 1903.

[Seal Albany County, July, 1847.]

JOHN FRANEY,
Clerk of Albany County and of Supreme Court of State of New York.

862 THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* METROPOLITAN STREET RAILWAY COMPANY, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE TWENTY-third Street Railway Company, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE CENTRAL Crosstown Railroad Company, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONSOLIDATED Gas Company of New York, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* BROOKLYN CITY Railroad Company, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* CONEY ISLAND and Brooklyn Railroad Company, Respondent, *v.* State Board of Tax Commissioners, Appellant.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* NEW AMSTERDAM Gas Company, Respondent, *v.* State Board of Tax Commissioners, Appellant.

1. Constitutional law—Transfer of essential functions of local officers to State officers prohibited—Home rule provision const. art. 10, § 2.—The home rule provision of the constitution (art. 10, § 2) providing that "all city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such
863 authorities thereof, as the legislature shall designate for that purpose," protects all essential or exclusive functions theretofore belonging to local officers and prohibits their transfer, whether direct or indirect, to State officers.

2. Construction of home rule provision as affecting taxation.—This provision, however, when invoked in relation to taxation should be considered in connection with the supreme taxing power of the legislature and neither should be so construed as to embarrass or cripple the other. Home rule, as understood and practiced in the past, giving to localities the right to govern themselves, but not to hamper the government of the State, should be carefully protected from open attack or indirect invasion. Shadows, however, should give way to

substance, and the right to create a new system of taxation and bring in property of a new character, hitherto untaxed, with some other property incidental thereto and worthless without it, cannot be denied upon principle and should not be withheld from the legislature.

3. Corporations—General franchises defined.—The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the State. Such franchise, however, gives the corporation no right to do anything in the public highways without special authority from the State or some municipal officer or body acting under its authority.

4. Special franchises defined.—A special franchise is the right granted to a corporation to construct, maintain or operate in a public highway some structure intended for public use, which except for the grant would be a trespass.

5. Tax—Special franchise tax act—L. 1899, ch. 712—Substance of statute.—Chapter 712 of the Laws of 1899, amending the general tax law and authorizing for the first time in the history of the State the assessment or valuation for the purpose of general taxation of all special franchises by a State board of tax commissioners appointed by the governor, declares in substance that the right, authority or permission to construct, maintain or operate some structure, intended for public use, "in, under, above, on or through streets, highways, or public places," such as railroads, gas pipes, water mains, poles and wires for electric, telephone and telegraph lines, and the like, is a special franchise. For the purpose of taxation such a franchise is made real estate and is "deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise," and taxed as a part thereof. (§ 2, subd. 3.) This includes nothing but what is in the street, directly or indirectly, and excludes power houses, depots and all structures without the lines of the street. The taxes thus imposed are for general purposes, are collected in the same way, and used for the same objects as other taxes upon the general assessment roll.

6. Act not violative of home rule provision—It creates new system of taxation, requiring officers with new functions to en-
861 force it—Tangible property connected with special franchises is an inseparable part thereof, forming an entity which was never taxable by local assessors—The fact that such statute confers upon State officers the right to assess such franchises and especially the right to assess the tangible property annexed thereto and included therein by the act, which

was formerly assessed by local boards of assessors, does not violate the principle of home rule embodied in the constitution. 1. Because it creates a new system of taxation and brings within its range a new character of property, which required new methods of valuation and the exercise of functions which never belonged to local assessors and must necessarily have been committed to State officers with new functions whose sole duty related to the subject of taxation in all its phases throughout the entire State, and who, with wider experience and greater opportunities for observation than local assessors, would be able to grasp the new scheme of taxation as a whole and whose action would be free from all local prejudice or color and uniform in its result. 2. Because the tangible property formerly assessed by local assessors is an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which in a going concern can neither be assessed nor sold to advantage except as one thing, single and entire, and the function of assessing such entity is not essentially local in character, never belonged to localities, never was and never could be exercised with the requisite justice and uniformity by their officers, and, therefore, was of necessity conferred upon State officers, expert tax officials, having a jurisdiction coextensive with the limits of the State. Property, therefore, created by the legislature and never intrusted by it to local assessors cannot with propriety be said to have been taken away from them.

7. Authorities on home rule question collated.—The authorities relating to the home rule provision of the constitution collated and discussed.

8. Decisions, not expressions of judges used *arguendo*, establish legal principles.—Legal principles are not established by expressions of learned judges, used *arguendo* in their opinions in a given case, but by what was decided therein, and what is written is not evidence of what was decided unless it relates directly to the question presented for decision.

9. Franchises taxable as other property—Act is not violative of Federal Constitution as impairing the obligation of contracts.—A franchise, whether general or special, is taxable the same as other property, and, therefore, the statute taxing special franchises, which changes no part of the grant, alters no stipulation, increases no payment, exacts nothing from their owners that is not exacted from the owners of property generally, does not impair the obligation of a contract and cannot be regarded as violating the Federal Constitution.

10. Additional objections overruled.—Contentions that the act is impracticable and incapable of execution; that the special fran-

865 chises should have been separately assessed; that the State Tax Commissioners adopted no rule in making the assessments; that the relators did not have a proper hearing at the time provided for review, and that due process of law was not observed in the taxation of their property, after due consideration, are overruled.

People ex rel. Met. St. R'y Co. v. Tax Com'rs, 79 App. Div. 184, reversed.

People ex rel. T. T. St. R'y Co. v. Tax Com'rs, reversed.

People ex rel. C. C. R. R. Co. v. Com'rs, reversed.

People ex rel. N. A. Gas Co. v. Tax Com'rs, 79 App. Div. 643, reversed.

People ex rel. C. Gas Co. v. Tax Com'rs, 79 App. Div. 643, reversed.

People ex rel. C. I. & B. R. R. Co. v. Tax Com'rs, 79 App. Div. 643, reversed.

People ex rel. B. C. R. R. Co. v. Tax Com'rs, 79 App. Div. 643, reversed.

(Argued April 6, 1903; decided April 28, 1903.)

Appeal in each of the above-entitled proceedings from an order of the appellate division of the supreme court in the third judicial department, entered January 30, 1903, which reversed an order of special term reducing and confirming as reduced an assessment upon the special franchises of the respective relators.

The assessments in question were made in the year 1900, pursuant to the provisions of the tax law, as amended by chapter 712 of the Laws of 1899. Separate writs of certiorari, granted to review the respective assessments, resulted in an order in each proceeding appointing a referee to take and report to the supreme court such evidence upon the several issues raised by the petition, writ and return as might be adduced before him by the parties, with his findings of fact and conclusions of law thereon. After taking many pages of evidence the referee made separate and complete findings of fact appropriate to each proceeding, and as conclusions of law in each found "that chapter 712 of the Laws of 1899 is a valid and constitutional enactment, practicable and operative, and that it gave authority to the defendants to assess the relator's special franchises for the purpose of assessment and taxation; that the relator had a hearing and due process of law before the defendants upon the review of its assessment * * * and was not deprived of any of its legal or constitutional
866 rights; that it was lawful to assess as one franchise the franchise, right, authority or permission which the relator had in the streets of New York and which it operated as one system; that to equalize its assessment with the assessment of other real property in the city of New York, the relator is entitled to a deduction," the amount being named in each proceeding, "and that the assessment as thus reduced must be taken as the value of the relator's special

franchise for the purposes of assessment and taxation under the act."

The supreme court adopted the findings both of fact and law made by the referee and directed that final orders be entered in accordance therewith. From the order so entered in each proceeding the relator therein appealed to the appellate division, which affirmed as to the facts but reversed as to the law, upon the ground that the statute in question was in violation of the "home rule" provision of the constitution. Two of the justices dissented. The State Board of Tax Commissioners appealed to this court from the several orders entered accordingly.

John Cunneen, attorney-general (*William H. Wood* of counsel), for appellant. The entire statute is valid. There is no arbitrary line which separates the official functions which properly belong to local officers from those which properly belong to State officers. The power to make the distinction is vested in the legislature. (Const. of 1777, § 20; Const. of 1821, art. 4, § 15; Const. of 1846, art. 10, § 2; *Matter of Henneberger*, 155 N. Y. 421; *People ex rel. v. Albertson*, 55 N. Y. 50; *Matter of N. Y. D. R'y Co.*, 42 Hun, 621; 107 N. Y. 42; *People ex rel. v. Lorillard*, 135 N. Y. 285; *Rathbone v. Wirth*, 150 N. Y. 459; *N. Y. E. Dep't v. A. S. Co.*, 106 N. Y. 577; *People v. Cheritree*, 6 T. & C. 473; *Greaton v. Griffin*, 4 Abb. Pr. [N. S.] 310; *Haulon v. Bd. of Suprs.*, 57 Barb. 383; *City of Syracuse v. Hubbard*, 64 App. Div. 587.) It is within the power of the legislature to create a new office to be filled by a State officer and to transfer the power of valuing property to it, even though this power has, since
867 before 1777, been exercised by local assessors. (*Matter of Allison v. Wilde*, 172 N. Y. 421; *People v. Raymond*, 37 N. Y. 431.) The subject of assessment and taxation is the "right," "privilege" or "franchise" to occupy a street. The "tangible" property employed in the exercise of this right is merely incidental to the right. Prior to the enactment of chapter 712 of the Laws of 1899 the property thereby rendered assessable had never been assessed locally and, therefore, the local assessors are deprived of no function. (*Matter of N. Y., W. S. & B. R. R. Co.*, 37 Hun, 317; *Ritchmyer v. Morss*, 3 Keyes, 349; *Matter of McPherson*, 104 N. Y. 306; *Matter of Romaine*, 127 N. Y. 80; *People v. H. Ins. Co.*, 92 N. Y. 328; *H. Ins. Co. v. New York*, 134 U. S. 594) The franchises granted by the municipal authorities to the relators herein to use public streets are property. (*People v. O'Brien*, 111 N. Y. 1; *People v. Dechan*, 153 N. Y. 528; *Ingersoll v. N. E. R. R. Co.*, 157 N. Y. 453.) The grant of property by the State or by a municipal corporation, upon payment therefor of a consideration, payable either in gross or by annual payments, and expressed in the grant, does not carry with it any implied condition or agreement that the property so granted shall be forever thereafter exempted from taxation. Taxation of the property so granted is not an impairment or change of the contract by which the grant was made. (*People ex rel. v. Board of Commissioners*, 76 N. Y. 64; *People v. Commissioner of Taxes*, 82 N. Y. 459; *People ex rel. v. Davenport*, 91 N. Y. 574; *Delaware Railroad Tax*,

18 Wall. 206; *M. G. L. Co. v. Shelby County*, 109 U. S. 398; *N. O., C. & L. R. R. Co. v. New Orleans*, 143 U. S. 192; *Ford v. D. & P. L. Co.*, 164 U. S. 662.) A law which imposes a tax upon property for public use and in which provision is made for notice to the person taxed, a hearing before the assessing officers, and an opportunity for review by the courts does not take property without due process of law. (*Kentucky R. R. Tax Cases*, 115 U. S. 321; *McMillen v. Anderson*, 95 U. S. 37; *Lent v. Tillson*, 140 U. S. 316; *Palmer v. McMahon*, 133 U. S. 660;
868 *Paulsen v. Portland*, 149 U. S. 30; *Stuart v. Palmer*, 74 N. Y. 183.) It is possible to ascertain the value of a special franchise with substantial correctness and the act is not void from impracticability. (*People v. Davenport*, 91 N. Y. 574; *People v. Feitner*, 54 App. Div. 217; *People v. Coleman*, 107 N. Y. 541; *People ex rel. v. Barker*, 144 N. Y. 94; *People ex rel. v. Barker*, 146 N. Y. 304; *C. S. R'y Co. v. Common Council*, 125 Mich. 673; *A. E. Co. v. State Auditor*, 166 U. S. 185.) The assessments are not illegal, because several special franchises belonging to the same corporation and all in the same tax district, were assessed as a unit and not separately. (*People ex rel. v. Feitner*, 65 App. Div. 318; 169 N. Y. 604; *C. S. R. R. Co. v. Common Council*, 125 Mich. 683.)

David B. Hill for respondents. The function of assessment for the purposes of taxation is inherently a local function and adheres to the counties, cities, towns and villages of the State with substantially the like effect as though there was an express provision therefor in the constitution, and such function cannot be transferred to officials not elected or appointed by such localities. (*People v. Raymond*, 37 N. Y. 428; *Matter of Brenner*, 170 N. Y. 185; *People v. Albertson*, 55 N. Y. 50; *Rathbone v. Wirth*, 150 N. Y. 459; *People ex rel. v. McKinney*, 52 N. Y. 374; *People ex rel. v. Crooks*, 53 N. Y. 648; *People ex rel. v. Foley*, 148 N. Y. 677; *People ex rel. v. Randall*, 151 N. Y. 497; *People ex rel. v. Palmer*, 154 N. Y. 133.)

Charles F. Brown, *David B. Hill*, *Frank H. Platt*, and *William H. Page, Jr.*, for Metropolitan Street Railway Company, respondent. The effect of the special franchise tax law is to transfer to the office of State Tax Commissioners the function of assessing a large class of property for local purposes, which, at the adoption of the constitution, was a function of the office of city, town or village assessors. This the legislature had no power to do. (*People*
869 *v. Raymond*, 37 N. Y. 428; *People ex rel. v. McKinney*, 52 N. Y. 374; *People v. Albertson*, 55 N. Y. 50; *Matter of Brenner*, 170 N. Y. 185; *Matter of Allison v. Welde*, 172 N. Y. 421; *People v. Draper*, 15 N. Y. 532.) The assessment of property has always been the function of a local officer. (1 Dowell's Hist. of Taxation, 70, 74; 1 Stubbs' Const. Hist. of England [3d ed.], chs. 12, 14, 15; Howard's Local Const. Hist. of U. S. ch. 4, subd. 6; *People v. Harding*, 53 Mich. 481; *People v. Hurlburt*, 24 Mich. 44; *Slaughter House Cases*, 16 Wall. 36.) The assessment of property for the purposes of taxation is a function of local officers, who are required to be selected as provided by section 2 of article 10 of the constitution. (*People v. Ray-*

mond, 37 N. Y. 428; *Warner v. People*, 2 Den. 272; *People v. Albertson*, 55 N. Y. 50; *People v. Priest*, 169 N. Y. 432.) The special franchise tax law cannot be sustained upon the fact that a franchise to use streets, highways and public places was not at the adoption of the constitution subject to direct taxation, or upon the theory that the relation between the franchise and the tangible property in connection therewith is such that the legislature is justified in withdrawing the latter from the jurisdiction of local assessors and requiring both classes of property to be assessed together by State officials. (L. 1900, ch. 254, § 42; *People v. Albertson*, 55 N. Y. 50.) The special franchise tax law cannot be sustained upon the grounds that the amount of property withdrawn from the jurisdiction of local assessors is so inconsiderable that the home rule principle of the constitution is not violated. (*McCulloch v. Maryland*, 4 Wheat. 316; *Met. Bd. of Excise v. Barrie*, 34 N. Y. 657.) The contention that it is within the power of the legislature to take to itself and resume the appointment and control of offices for the purpose of performing administrative duties throughout the whole State, even though such administrative duties were at the adoption of the constitution performed by local officers in the cities, towns and villages of the State for local purposes, cannot be sustained. (Dillon on Mun. Corp. [4th ed.] § 12;
870 *Rathbone v. Wirth*, 150 N. Y. 459; *People v. Hurlburt*, 24 Mich. 44; *People v. Acton*, 48 Barb. 524; *Devoy v. Mayor, etc.*, 36 N. Y. 449; *People v. Pinckney*, 32 N. Y. 377; *People ex rel. v. Common Council*, 28 Mich. 228; *Att'y-General v. Bd. of Councilmen*, 58 Mich. 213; *City of Evansville v. State*, 118 Ind. 427; *State ex rel. v. Deemy*, 118 Ind. 382; *People v. Shepherd*, 36 N. Y. 285.) The Board of Tax Commissioners erred in assessing all the special franchises of the relator as a single franchise instead of "fixing and determining the value of each" as required by section 42 of the tax law. (*May v. Traphagen*, 139 N. Y. 478.) The contention that the relator is the owner of several special franchises and that each is a separate piece of property is sustained by consideration of the legal character of the property and by the provisions of law applicable thereto. (*May v. Traphagen*, 139 N. Y. 478; *People ex rel. v. Dolan*, 126 N. Y. 166; *People ex rel. v. Clapp*, 152 N. Y. 490; *People ex rel. v. Barker*, 48 App. Div. 248; *Williams v. N. Y. C. R. R. Co.*, 16 N. Y. 97; *Craig v. R. C. & B. R. R. Co.*, 39 N. Y. 404; *People v. Kerr*, 27 N. Y. 188; *Milhau v. Sharp*, 27 N. Y. 611; *People v. Cassidy*, 46 N. Y. 46; *People v. O'Brien*, 111 N. Y. 1.)

William H. Page, Jr., for Twenty-third Street Railroad Company *et al.*, respondents. The legislature of this State cannot appoint or authorize central authorities to appoint any local officer, nor can the legislature create State officers to perform an inherently local function of government. (*Sheboygan v. Parker*, 3 Wall. 93; *Matter of Mayor, etc.*, 99 N. Y. 569; *People ex rel. v. State Bd. of Canvassers*, 129 N. Y. 360; *Rathbone v. Wirth*, 150 N. Y. 459; *People v. Mosher*, 163 N. Y. 32; *People v. Bull*, 46 N. Y. 57; *People v. McKinney*, 52 N. Y. 374; *People v. Crooks*, 53 N. Y. 648; *People v. Foley*, 148 N. Y. 677; *People v. Acton*, 48 Barb. 524; *Matter of Brenner*, 170 N. Y. 185.)

The function of assessing property—of perfecting a valuation of property as a basis of taxation—is to be exercised exclusively
871 by local officers, and, therefore, the officers who exercise that function in New York city must be "city officers" within the meaning of the "home rule" provision of the State constitution. (*People v. Raymond*, 37 N. Y. 428.) The effect of the special franchise tax act is to deprive the local assessor of the function of assessing taxable property, and is, therefore, unconstitutional. (*People ex rel. v. Priest*, 169 N. Y. 432; *People v. Hastings*, 29 Cal. 449.) The history of the assessment of taxable property in New York State shows conclusively that the function of assessment has always been regarded as a purely local function, and it is impossible to suppose that the people intended to confer upon the legislature the power to interfere with this immemorial custom. (1 Colonial Laws, 14, 61, 131; 2 Colonial Laws, 269; 3 Colonial Laws, 577; 4 Colonial Laws, 419; 5 Colonial Laws, 858; *Goodell v. Jackson*, 20 Johns. 693; *Matter of Allison v. Welde*, 172 N. Y. 421; *People ex rel. v. Potter*, 47 N. Y. 375; *Pope v. Phifer*, 3 Heisk. 682.) This court has upheld the right of the legislature to interfere with local administration of certain State police powers. (*People ex rel. v. Draper*, 15 N. Y. 532; *Metro. Bd. of Excise v. Barrie*, 34 N. Y. 657.) But the assessment of property as a basis of taxation has always been as a matter of fact, and has been held to be as a matter of law, exclusively a local function of government. (*People v. Raymond*, 37 N. Y. 428.) Special franchises must be valued by a local officer, because the special franchise tax act provides for the imposition of a property tax, and not a license fee. (*Matter of Swift*, 137 N. Y. 77.) The contention that the so-called "special franchise" constitutes a new species of property, with the characteristic distinguishing features that it is partly intangible and not localized does not warrant its assessment by a State official. (*City of Buffalo v. Le Couteulx*, 15 N. Y. 451; *M. S. Bank v. City of Rochester*, 37 N. Y. 365; Cooley's Const. Lim. [6th ed.] 220.)

Frank H. Platt for Consolidated Gas Company of New York,
872 respondent. The special franchise tax law taxes only the rights of a company to use streets, and its tangible structures in the streets used in connection with those rights. The tax is laid on no other property or right. The valuation must be of the special franchise, separate from all other rights and property. (*People ex rel. v. Dolan*, 126 N. Y. 166.) The considerations which influenced the commissioners in making their assessment of the company's special franchises afforded no true test of the value of those special franchises, and resulted in no actual valuation thereof. The assessment was a mere arbitrary determination. (*People ex rel. v. Ganley*, 29 N. Y. S. R. 135; *City of Syracuse v. Stacy*, 45 App. Div. 249; *People ex rel. v. Barker*, 146 N. Y. 304; *People ex rel. v. Coleman*, 126 N. Y. 433; *State R. R. Tax Cases*, 92 U. S. 575; *C., C., C. & St. L. R. R. Co v. Backus*, 154 U. S. 439; *A. E. Co. v. Ohio State Auditor*, 165 U. S. 194; *People ex rel. v. Barker*, 139 N. Y. 55; 141 N. Y. 251; *People ex rel. v. Barker*, 165 N. Y. 305.) The valuation of property according to some proper principle of valuation is essential to the

validity of an assessment, and, as the valuation of the State board was a mere arbitrary determination, the assessment should be set aside. (*Lee v. Parry*, 4 Den. 125; *Doughty v. Hope*, 3 Den. 594; *Powell v. Tuttle*, 3 N. Y. 396; *People v. Supervisors*, 11 N. Y. 563; *Middletown v. Berlin*, 18 Conn. 189; Cooley on Taxation, 353, 354; *Woodman v. Auditor-General*, 52 Mich. 28; *Greenough v. Fulton Coal Co.*, 74 Penn. St. 486; *People v. Hastings*, 29 Cal. 449; *People ex rel. v. Coleman*, 126 N. Y. 433; *People v. Weaver*, 100 U. S. 539.) The company is aggrieved by the assessment, and has shown itself entitled to relief. (*People ex rel. v. Barker*, 148 N. Y. 70; *People ex rel. v. Coleman*, 126 N. Y. 433; *People ex rel. v. Barker*, 146 N. Y. 304; 152 N. Y. 417; *People ex rel. v. Dederick*, 161 N. Y. 195; *People ex rel. v. Barker*, 139 N. Y. 55.) There is no method by which the value of a special franchise can be ascertained. (*People ex rel. v. Dolan*, 126 N. Y. 166; *People ex rel. v. Clapp*, 152 N. Y. 490; *People v. Kerr*, 27 N. Y. 188; *Kellinger v. F. S. S. R'y Co.*, 50 N. Y., 206; *Zollikoffer v. Havemeyer*, 2 Hun, 300; *Matter of Adams*, 141 N. Y. 297; *Matter of B., H. T. & W. R. Co.*, 22 Hun, 176; *People ex rel. v. Com'rs*, 104 N. Y. 240; *State R. R. Tax Cases*, 92 U. S. 575; *C., etc., R. R. Co. v. Backus*, 154 U. S. 439.) As there is no method of ascertaining the values of special franchises, the franchise tax act is impossible of execution. (*People ex rel. v. Morgan*, 168 N. Y. 1; *Hughes' Case*, 1 Bland, 46; *Ward v. Ward*, 37 Tex., 389; *Chaffee's Appeal*, 56 Mich., 244; *Drake v. Drake*, 4 Dev. 110.) The assessment of the special franchises of the company should be set aside, because the board undertook to assess all of its special franchises as one franchise instead of assessing each franchise separately. (*E. E. Co. v. N. H. E. L. Co.*, 35 Fed. Rep. 233.)

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Charles A. Collin, William F. Sheehan, John L. Wells, Thomas L. Hughes, Charles H. Werner and *Charles V. Nellany* for The Brooklyn City Railroad Company, respondent. There is a clear distinction between a corporate charter, constituting the contract of incorporation, which is legislative in its character and subject to legislative alteration, amendment or repeal, and legislation constituting a business contract with a private corporation which is essentially contractual in character, and is not subject to legislative alteration, amendment or repeal, without the consent of the private corporation, party to the contract. (*Langdon v. Mayor, etc.*, 93 N. Y. 129; *People v. O'Brien*, 111 N. Y. 1.) Such franchise contracts as form part of the special franchises of these respondent corporations (whether such franchise contracts are constituted directly by State legislation accepted by the corporations, or by municipal ordinance, authorized by the legislature and in like manner accepted by the corporations) are business contracts, protected by the Federal Constitution from impairment by legislative alteration, amendment or repeal, without consent of the corporations. (*City of Walla Walla v. W. W. W. W. Co.*, 172 U. S. 1.) The taxing power cannot be invoked by the State to raise itself above the position of a private person, as regards the sacred observance of its business contracts. (*Murray v. City of Charleston*, 96 U. S. 432; *Hartman v. Greenhow*, 102 U. S. 672.) In

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the absence of provisions in the franchise contract itself, reserving the right of the State or municipality to alter, amend or repeal the contract, neither the State nor the municipality can, without the consent of the grantee in the franchise contract, either by State or municipal legislation, or by State constitutional amendment, change the terms of the franchise contract so as to avoid an express stipulation therein on the part of the municipality. (*City of Walla Walla v. W. W. W. Co.*, 172 U. S. 1; *T. W. Works Co. v. Vicksburgh*, 185 U. S. 65; *L. F. El. & W. Co. v. City of Little Falls*, 102 Fed. Rep. 663; *N. O. G. L. Co. v. L. L., etc., Co.*, 115 U. S. 650; *N. O. W. W. Co. v. Rivers*, 115 U. S. 674; *L. G. Co. v. C. G. L. Co.*, 115 U. S. 674; *S. T. W. W. Co. v. N. O. W. W. Co.*, 120 U. S. 64; *Am. W. W. Co. v. H. W. Co.*, 115 Fed. Rep. 171; *C. Ry Co. v. C. S. Ry Co.*, 166 U. S. 557; *B. C. R. R. Co. v. B. C. R. R. Co.*, 32 Barb. 358.) The taxation of the franchise contracts of public service corporations where the right to impose such tax is not expressly or impliedly reserved in the franchise contracts would be an impairment of the obligation of the contracts, and would, therefore, be unauthorized and void. (*Mayor, etc., v. S. A. R. R. Co.*, 32 N. Y. 261; 34 Barb. 41; *Mayor, etc., v. T. A. R. R. Co.*, 33 N. Y. 42; *Stein v. Mayor, etc.*, 49 Ala. 362; *Los Angeles v. L. A. W. Co.*, 61 Cal. 65; *Los Angeles v. L. A. W. Co.*, 177 U. S. 588; *S. T. Co. v. City of Medford*, 115 Fed. Rep. 202; *Gordon v. Appeal Tax Court*, 3 How. [U. S.] 133.) The failure of the special franchise tax law to indicate any principle or method for ascertaining the value of the intangible property included in the special franchise, the failure of the State board to attempt any separate valuation of the intangible property and its failure to adopt or proceed upon any principle or method of valuing the totality of intangible and tangible property together constituting the special franchise, and necessarily the substitution therefor of speculation and guesswork in place of judgment in making such valuation amounted to such an absence of quasi-judicial action as to constitute the taking of property without due process of law; and if the statute contemplates such a procedure, the statute itself is unconstitutional for the same reason. (*People ex rel. v. Barker*, 48 App. Div. 248; 152 N. Y. 417; *People ex rel. v. Clapp*, 152 N. Y. 490; *People ex rel. v. Adams*, 125 N. Y. 471; *People ex rel. v. Coleman*, 126 N. Y. 433; *Marsh v. Bd. of Supvrs. of Clark Co.*, 42 Wis. 502; *Goff v. Bd. of Supvrs.*, 43 Wis. 55; *People v. Weaver*, 100 U. S. 539; *Woodbridge v. Detroit*, 8 Mich. 274; *People v. S. F. S. Union*, 31 Cal. 132.) The State board failed to give the respondent corporations such a hearing as due process of law requires. (*Hager v. Reclamation Dist.*, 111 U. S. 701.)

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William N. Dykman for Coney Island and Brooklyn Railroad Company, respondent. The special franchise on Ocean avenue and Fort Hamilton avenue, formerly owned by Prospect Park and Flatbush Railroad Company, should be separately assessed from the special franchise extending from Prospect park to Fulton ferry. (*People v. O'Brien*, 111 N. Y. 1.) The commissioners have adopted an erroneous method of assessment. (*People ex rel. v. Barker*, 152 N. Y. 417.)

John C. Tomlinson and *Edgar J. Kohler* for The New Amsterdam Gas Company, respondent. Things or rights may be property in a legal sense and may have value, and yet that value not be ascertainable in dollars and cents, or capable of admeasurement for the purpose of ad valorem taxation. (*Perry v. City of Big Rapids*, 67 Mich. 146; *Dart v. Woodhouse*, 40 Mich. 399; *Tax Com'rs v. Holiday*, 150 Ind. 216; *People ex rel. v. Clapp*, 152 N. Y. 490; *People ex rel. v. Neff*, 19 App. Div. 585; *H. B. Co. v. Kentucky*, 166 U. S. 150.) A special franchise considered as a distinct piece of property, is in no proper or legal sense capable of valuation, and an assessment thereof
876 cannot be sustained upon the ground that a special franchise, while not susceptible of an accurate admeasurement of value, nevertheless admits of a sufficiently close approach to a correct valuation to suffice for purposes of taxation. (*Taylor v. L. & N. R. R. Co.*, 86 Fed. Rep. 350.)

VANN, *J.*:

These appeals were argued together and the questions of law presented are common to all the proceedings. The only questions peculiar to any case were questions of fact, which have been finally disposed of by the concurrent action of the courts below, as they united in adopting the facts as found by the referee. The main discussion at our bar, as well as in the four opinions written in the appellate division, related to the question whether the statute under which the assessments were made violates that part of the constitution which provides for home rule in certain political divisions of the State. In order to answer this question it will be useful to inquire: (1) What does the constitution prohibit; (2) what does the statute command, and (3) what have the courts held as to the validity of other statutes relating to similar subjects?

The principle of home rule, or the right of self-government as to local affairs, existed before we had a Constitution. Even prior to Magna Charta some cities, boroughs and towns had various customs and liberties which had been granted by the Crown or had subsisted through long user, and among them was the right to elect certain local officers from their own citizens and, with some restrictions, to manage their own purely local affairs. These customs and liberties, with other rights, had been so often trampled upon by the king as to arouse deep hatred of centralization of power, and we find among the many grants of the Great Charter that "the city of London shall have all its ancient liberties and its free customs as well by land as by water. Furthermore, we will and grant that all other cities and burghs and towns * * * shall have all their liberties and free customs." (Cap. 13.) "All evil customs * * * shall immediately be enquired into by twelve knights of the same
877 county, upon oath, who shall be elected by good men of the same county," and after inquisition made "they shall be altogether destroyed by them, never to be restored, provided this be notified to us before it is done." (Cap. 48.) After this marvelous statute, rights, which before had rested largely on custom, rested

on law, with a guaranty against violation by the amazing covenant of King John that if he refused redress for an "excess committed" his subjects should be released from their allegiance and at liberty to make war upon him, "saving harmless our person and the persons of our queen and children and when it hath been redressed they shall obey us as they have done before." (Cap. 61.)

The rights thus secured after a long struggle and by great pressure, although at times denied and violated by the ruling monarch, were never lost, but were brought over by the colonists the same as they brought the right to breathe, and they would have parted with the one as soon as the other. The liberties and customs of localities reappear on a novel and wider basis in the town meetings of New England and the various colonies, including the colony of New York. The right of the inhabitants of townships and manors to meet at stated times in public town meetings, elect town officers and transact town business, was well established while we were a colony and was recognized by different statutes enacted by the governor, council and General Assembly. (Van Schaack, chaps. 1201, 1224, 1419, 1448, 1454, 1459, 1460, 1499, 1536 and 1562; Livingston & Smith, chaps. 43 and 654.)

The business transacted at the town meeting related to highways, care of the poor, and matters of purely local concern. It was confined to the affairs of a small district and was clearly separated from public matters of interest to the colony at large. The officers elected, generally by *viva voce* vote, were supervisors, assessors, collectors, constables, commissioners of highways and overseers of the poor. The powers and duties of these officers were regulated by statute, but the right to select them resided in the people of the locality and was stubbornly insisted upon as inviolable.

878 Such was the state of affairs when the first constitution was adopted. While that instrument organized the State, it granted no rights to the people, but was their own creation, expressing the restraints that they desired to place upon themselves by preserving certain principles and methods of government which they wished to remain unalterable. Thus the constitution of 1777 recognized local self-government as already existing, and continued and protected it, so that it could not lawfully be departed from without changing the constitution itself. It provided that "town clerks, supervisors, assessors, constables and collectors and all other officers heretofore eligible by the people, shall always continue to be so eligible." (§ 29.) Sheriffs, coroners, loan officers, county treasurers, clerks of supervisors and justices of the peace were to be appointed. (§§ 26, 29.) Thus our earliest constitution did not create the right to elect the administrative officers of towns, but continued it as it had existed during the history of the colony while it was under the dominion of the English Crown. The only local officers mentioned by name as "eligible by the people" were town officers, and in fact almost all officers of other local divisions were appointed by central authority.

The second constitution, framed in 1821, continued the right by

the general clause, applicable to county, town, city and village officers, that "all officers heretofore elected by the people shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed." (Art. 4, § 15.) Sheriffs, coroners and some other county officers were for the first time made elective.

The third constitution, drafted in 1846, continued the principle and expanded the right by the following provision: "All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county officers, as the legislature shall direct. All city, town and village
879 officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct." (Art. 10, § 2.) The same provision was carried forward, *ipsissimis verbis*, into our present constitution. (Art. 10, § 2.)

These and other commands of the different constitutions, when read in the light of prior and cotemporaneous history, show that the object of the people in enacting them was to prevent centralization of power in the State and to continue, preserve and expand local self-government.

This was effected through a judicious distribution of the power of selecting public officers, by assigning the choice of local officers to the people of the local divisions, and to the people generally, those belonging to the State at large. The management of the local political business of localities, whether as large as a county or as small as a village, is intrusted to local officers selected by the communities where those officers act and through which their jurisdiction extends. The principle of home rule is preserved by continuing the right of these divisions to select their local officers, with the general functions which have always belonged to the office. Unless the office, by whatever name it is known, is protected, as the courts have uniformly held, the right to choose the officer would be lost, for with his former functions gone he would not be the officer contemplated by the constitution, even if the name were retained. Unless the office or officer is mentioned *eo nomine* in the constitution, the name may be changed, or the office abolished, provided the functions, if retained at all, remain in some officer chosen by the locality. Local functions, however, cannot be transferred to a State officer. The legislature has the power to regulate, increase or diminish the duties of the local officer, but it has been stead-
880 fastly held that this power is subject to the limitation that no essential or exclusive function belonging to the office can be

transferred to an officer appointed by central authority. The office may go, but the function must be exercised locally if exercised at all. While no arbitrary line is drawn to separate the powers of local and State officers, the integrity of the local office is protected, with its original and inherent functions unimpaired. It is interference, whether direct or indirect, with the vital, intrinsic and inseparable functions of the office as thus defined and understood that the constitution prohibits. (*People ex rel. Wood v. Draper*, 15 N. Y. 532; *People v. Raymond*, 37 N. Y. 428; *People ex rel. Bolton v. Albertson*, 55 N. Y. 50; *Astor v. Mayor, etc., of N. Y.*, 62 N. Y. 567; *Matter of the Mayor, etc., of N. Y.*, 99 N. Y. 569; *Matter of Gertum v. Bd. Suprs.*, 109 N. Y. 170; *Koch v. Mayor, etc., of N. Y.*, 152 N. Y. 72; *People ex rel. Burby v. Howland*, 155 N. Y. 270; *People ex rel. Com'rs v. Board of Suprs., Oneida Co.*, 170 N. Y. 105; *Matter of Brenner*, 170 N. Y., 185; *Matter of Allison v. Welde*, 172 N. Y. 421.)

The statute in question authorizes the assessment or valuation, for the purpose of general taxation, of all special franchises by a State board of tax commissioners appointed by the governor. (L. 1899, ch. 712.) The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the State. The general franchise of a street railroad company, for instance, is the special privilege conferred by the State upon a certain number of persons known as the corporators to become a street railroad corporation and to construct and operate a street railroad upon certain conditions Such a franchise, however, gives the corporation no right to do anything in the public highways without special authority from the State, or some municipal officer or body acting under its authority. When a right of way over a public street is granted to such a corporation, with leave to construct and operate a street railroad thereon, the privilege is known as a special franchise, or the right to do something in the public highway, which, except for the grant, would be a trespass.

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The statute, which is an amendment of the general tax law, declares, in substance, that the right, authority or permission to construct, maintain or operate some structure, intended for public use, "in, under, above, on or through streets, highways or public places," such as railroads, gas pipes, water mains, poles and wires for electric, telephone and telegraph lines, and the like, is a special franchise. For the purpose of taxation such a franchise is made real estate and is "deemed to include the value of the tangible property of a person, copartnership or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise and taxed as a part thereof." (§ 2, clause 3.) This includes nothing but what is in the street, directly or indirectly, and excludes power houses, depots and all structures without the lines of the street. The taxes thus imposed are for general purposes, are collected in the same way, and used for the same objects as other taxes upon the general assessment roll.

Prior to the passage of this act general franchises had been taxed for the benefit of the State under a valuation made by a State officer,

with the sanction of the courts. (L. 1896, ch. 908, §§ 182, 190; *People ex rel. W. & H. Co. v. Roberts*, 154 N. Y. 101.) Special franchises, however, had never been lawfully assessed either by local or State authority, but were made taxable property by the act before us for the first time in the history of the State. (*People ex rel. Manhattan R. R. Co. v. Barker*, 146 N. Y. 304; *People ex rel. Brooklyn City R. R. Co. v. Neff*, 19 App. Div. 590; affirmed on opinion of Cullen, J., below in 154 N. Y. 763.) The right to assess special franchises by central authority is challenged as a violation of the principle of home rule embodied in the constitution and especially the right to assess the tangible property annexed thereto and included therein by the act, because the latter is withdrawn from the jurisdiction of the local assessors by whom it had been theretofore assessed.

882 Every presumption is in favor of the constitutionality of an act of the legislature and, if the constitution and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give them that construction; still, it is none the less their duty to adjudge the statute void if it is in plain conflict with the real intent of the fundamental law, when considered in the light of history and in all its aspects. (*Sweet v. City of Syracuse*, 129 N. Y. 316; *People ex rel. Sinkler v. Terry*, 108 N. Y. 1.)

What was the situation that confronted the legislature when it passed this statute to raise money for the support of government?

The governor had officially announced that "the farmers, the market gardeners, and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes." The legislature wished to distribute this burden in a just and equitable manner, to take part of the load from those who carried more than their share and to relieve the farms from some of the effects of depreciation in value through competition with the cheap and fertile lands of the West. It found property scattered all over the State worth nearly two hundred millions of dollars, which was not taxed at all and had never been taxed. This property consisted wholly of special franchises, or privileges given by the State, mainly to corporations furnishing to the public transportation, water, light and other necessities or conveniences of daily life. It had grown rapidly in extent and value during recent years. Its value rested upon the right to use in some manner the public highways of the State, but it was intangible, and doubtless for this reason had never been brought under the taxing power. The legislature also found certain tangible property, which was subject to taxation, situated in the public streets and used only in connection with and as a part of the intangible property not taxed, and of no substantial value except when so used. It found that the valuation of this new kind of property, intangible, invisible and elusive, but of great value, would be attended with peculiar difficulties, which

883 would require a degree of knowledge and skill not possessed by local assessors, but belonging only to experts who had long and carefully studied the subject of taxation in all its varied aspects. The problem was to place a just and adequate value upon

a right capable of valuation, but which was unseen, without form or substance, and, as it were, the mere breath of the legislature. It was a new problem that had never arisen before during the history of the State, and it was to be solved, not to meet local needs, but an exigency of State.

How did the legislature deal with this situation?

It created a new system of taxation, brought within its range a new character of property and assigned the duty of making the valuation to the State Board of Tax Commissioners, composed of tax experts already in office, whose sole duty related to the subject of taxation, in all its phases, throughout the entire State. It made the tax commissioners assessors of this new kind of property known as special franchises, clothed them with power to compel the owners to furnish under oath, in addition to a general report containing many details, such information as they called for; authorized them to call upon the local assessors for all facts that they could furnish and to summon aid from all available sources; required them to give notice to the owner affected and an opportunity to be heard, and provided a remedy for review by the courts of every assessment as soon as it was filed. It commanded that all sums, in the nature of a tax, paid by the owner of a special franchise to a municipality for its exclusive use, should be deducted from the tax imposed for local purposes, and exempted the tangible property situated in public highways, and used in connection with the special franchise, from all other forms of taxation. (§§ 2, 42, 43, 44, 45, 46.) The new kind of property was termed real estate, just as it might have been termed personal property, or neutral property, without changing its nature, which was such as local assessors had never dealt with.

The statute should be considered in the light of the circumstances existing when it was passed, which were extraordinary and
884 unprecedented. The system thus created had never been known before, and, as its main subject, the act dealt with special franchises, which had never been taxed before. Property unknown as the subject of taxation to the framers of any of our constitutions was brought into the system, which required new methods of valuation and the exercise of functions which had never belonged to local assessors. The property was *sui generis*, and from its nature could not be valued by local officers. Unless it escaped taxation in the future as it had in the past, it was necessary to commit the power to other officers with new functions, wider experience and greater opportunities for observation, who would be able to grasp the new scheme of taxation as a whole. We should not be misled by the terms "valuation" or "assessment," as the simple exercise of judgment, for no work can be done without that, but should compare the intrinsic nature of the functions exercised by the local assessors for time out of mind with those intrusted to the State tax commissioners, which had never been committed to any board or officer before.

The local assessors dealt with tangible property, which could be seen and was open to the judgment of ordinary men, or with written

evidence of debts or contracts the value of which could be easily computed. It was their habit to measure, weigh and count; to learn the market value from current sales; to pass upon physical and material property which they were accustomed to own, rent or use, and with which they were familiar in their daily life. They saw it, knew it and could judge as to its value. It was before their eyes and they could act upon it directly, without resort to complicated computations.

On the other hand, the valuation of special franchises had never been attempted before, but presented a new field of action and called for the exercise of new and different functions. They could not be seen, handled, measured, weighed or counted. They were specialties and had no market value. There were no sales to guide and no experience from ownership, rental or use to rely upon. The
885 new property is real estate in name, but not in reality, for it is a mere privilege to do something in public streets and places not permitted to citizens generally. While local in a narrow sense it is unconfined in its real nature, for it depends largely on the earning capacity of a going concern, frequently with several special franchises, but with no means of determining the amount earned by each. The value depends upon so many conditions, existing, frequently, in localities widely separated and upon such a complication of facts and figures that the valuation cannot be safely intrusted to men of common knowledge and experience. What greater calamity in the shape of taxation could threaten the vast interests involved than to intrust this important subject to unskilled and incompetent men, some of them willing it may be not only to protect their own localities at the expense of others, but to oppress corporations and favor individuals? The burden could not be distributed equally for each local board would have its own method and theory. Uniform action would be impossible and conflict and confusion would result. A wider view, a different kind of judgment, a balancing of localities and figures, an adjustment and equalization of burdens and an exercise of functions not local in nature were required to meet the situation. As we said in a recent case: "It is no disparagement of the capacity and intelligence of the average assessor to say that it would present to him a problem incapable of accurate solution and a rule of action in the performance of his official duty impossible in practice." (*People ex rel. D., L. & W. R. R. Co. v. Clapp*, 152 N. Y., 490, 495.)

The legislature also brought in as an incidental part of the system some tangible property which had been previously assessed by local authority. No tangible property, however, was affected, except such as was situated in the public highways and was so incidental to and dependent upon the special franchises as to have no substantial value unless used in connection with them. The relation between the intangible right to run cars in the streets and the tangible property in the rails to run the cars on, is so intimate as to be
886 inseparable in any practicable system of estimating values. Of what value are poles, strung with wires, standing in the

street, without a special franchise to use them to carry electricity or send the mysterious message? What are appliances worth, when made for a special purpose, if they cannot be used for that purpose? What are rails and ties worth, when so fastened to the land in a public highway as to be legally a part of it, without a special franchise to place and use them *them* there as part of a railroad? All the mains and pipes, poles and wires, rails and ties of the relators, when separated from their special franchises, have no value except as firewood or old iron. Their only substantial value is the right to use them in connection with the franchise, and, hence, they are incidental to the franchise. As part of the franchise they are worth something, but severed from it nothing to speak of. Suppose a street railroad company should forfeit its special franchise by a violation of the grant, what would its rails and ties be worth? They would cease to exist as rails and ties, and would become simply so much old material and even the title would vest in the owner of the fee. The expense of grading, placing them in position and paving around them, which is a large part of the original cost, would cease to be an investment and would be property no longer. They are worth virtually nothing except for railroad purposes and a railroad cannot occupy a street without a special franchise. Separate them from the franchise by taking away the street privilege, and they are destroyed. Their only value as rails and ties, as distinguished from so much old wood and iron, is gone. Taking the broad and practical view of the subject, which the legislature had the right to take in creating the new system, they have no assessable value worthy of notice, except through the actual and constant use made of them as incidental to the special franchises. The value of either resides in the union of both and can be practically ascertained only by treating them as a unit. Unless assessed together, both cannot be adequately assessed. A man of judgment, in valuing a wagon
887 and especially in estimating its earning capacity, does not pass upon the body, wheels, top and tongue separately. We regard the tangible property as an inseparable part of the special franchises mentioned in the statute, constituting with them a new entity, which as a going concern can neither be assessed nor sold to advantage, except as one thing, single and entire. (*People v. O'Brien*, 111 N. Y. 1; *Gue v. Tide Water Canal Co.*, 24 How. [U. S.] 257; *Hammock v. Loan and Trust Co.*, 105 U. S. 77; *Buncombe County Commissioners v. Tommey*, 115 U. S. 122.)

The function of assessing a special franchise does not in its nature belong to a county, city, town or village, for it has never been exercised by officers of such localities, but to the State, by which it is now exercised for the first time. It is not exclusively local in character and home rule applies only to functions peculiar to localities. It was unknown to our forefathers who brought over primitive home rule, to the colonists who preserved or to the founders of the State who developed it. It is no part of local self-government as known to history, or to learned judges who have written upon home rule in the past. It did not come within the experience of former times and

was not contemplated by the framers of our constitutions. They kept purely local affairs under local control, but this is not local in intrinsic character, for the power to be exercised is not confined to the limits of one community. While some special franchises are within a single tax district, others extend through several and sometimes into different towns, cities, and villages. The legislature could not make a law for each case, and in bringing the new system into operation it provided by general rule for all cases of the same general character, whether then existing or expected in the future.

Moreover, a special franchise, now confined to one tax district, may by expansion, through merger, consolidation, leasing and the like, extend into other tax districts. Such an enlargement is open to all, has been the experience of many and may be the experience of all.

888 The same corporation may have many special franchises, continuous or separate, yet they are all practically one, because they all belong to one system, the earning capacity of which may be ascertained, but not that of each special franchise independent of the others. By removing a central franchise, the line is broken and the value of all seriously impaired. The combination of all into a single enterprise gives the highest, if not the only value to each. What would a franchise in a town be worth with no right to enter a city or village? While the strength of the chain is in the links, the value of the links is in the chain. Hence, a franchise is not essentially local in character and may require action, observation and estimate beyond the lines of a single tax district, or the accustomed jurisdiction of local assessors. An examination of the books of the corporation may be necessary in making the valuation, yet they may not be kept in the municipality of the assessors' residence. A highway may be local, but the title thereto is not, for whether a fee or an easement it is held in trust for the people at large, represented by the State, which has control of the streets and of the erections therein. (*People v. Kerr*, 27 N. Y. 188.) The franchise is the right to put something in the highway and use it there, and if the right fails, the title to what was thus placed goes with the general title.

The special franchises of a railroad in operation from a city into suburban towns may be properly treated as an aggregation, without a precise *situs*, as one piece of property producing a gross income, as a single subject of valuation, like all the personal property of an individual, from one end of the line to the other, although the amount when ascertained must be apportioned and distributed among the several tax districts affected (§ 42). This can make no difference to the company, for it has only so much to pay in any event, and it shows that the work of valuation is not local, but general in its character, and that it is a matter of central rather than municipal concern. It affects the general public rather than the people of a community. The subject is one that local officers cannot handle, because they cannot consider it as a whole by going without their

889 precincts, but must stop at the boundaries of their several districts. They cannot make the distribution among localities interested in the special franchises. Local assessors still

remain local assessors, with every accustomed function intact and unimpaired. Local self-government is untouched and there is no invasion of local functions. While special franchises were known when the later constitutions were adopted, they were not then known as taxable property. The office of assessor of special franchises was then unknown. It is not local in nature, but is a new office with new functions adapted to property of a new kind and differing in principle from any ever dealt with by local assessors. Property created by the legislature and never intrusted by it to the local assessors cannot with propriety be said to have been taken away from them.

The entire taxing power belongs to the legislature and not a dollar can be raised for local or general purposes, to carry on self-government in localities or in the State, or to provide for the public safety, order or health except by its authority. This supreme power should be considered in connection with the home rule provision of the constitution, and neither should be so construed as to embarrass or cripple the other. Home rule, as understood and practiced in the past, giving to localities the right to govern themselves, but not to hamper the government of the State, should be carefully protected from open attack or indirect invasion. Shadows, however, should give way to substance, and the right to create a new system of taxation and bring in property of a new character, hitherto untaxed, with some other property incidental thereto and worthless without it, cannot, as we think, be denied upon principle and should not be withheld from the legislature unless required by some controlling decision of the court.

While *is* is difficult to classify all the authorities relating to the subject of home rule, the most of them fall into convenient groups. At the head of the first class stands the celebrated judgment of Chief Judge Denio in *People ex rel. Wood v. Draper* (15 N. Y. 532). In that case the statute combined four counties into one police
890 district, invested five police commissioners appointed by the governor, acting as a board with the mayors of two cities in the district, with all the powers previously belonging to certain local officers of said cities respectively. The new board was authorized to appoint and control all the policemen, who were to act in any part of the district, regardless of residence or county lines. The validity of the act was upheld upon the ground that the commissioners thus appointed were not city officers, although it was strongly challenged at the bar and by a vigorous dissenting opinion, as a violation of the home rule provision of the constitution.

Similar acts creating a new system by erecting a metropolitan fire district, a metropolitan health district, a metropolitan board of excise and a capital police district, each embracing the territory of two or more municipal divisions of the State, were also sustained, although functions formerly belonging to local officers were transferred to State officials. (*People v. Pinckney*, 32 N. Y. 377; *Metropolitan Board of Health v. Heister*, 37 N. Y. 661; *Metropolitan Board of Excise v. Barrie*, 34 N. Y. 657; *People ex rel. McMullen v. Shepard*, 36 N. Y. 285.)

An act, however, which established a police district consisting of a city, with a police force already organized, and "three small patches of sparsely settled territory, in all less than a square mile," was held unconstitutional as an obvious attempt to evade the restrictions relating to home rule, because it was designed for the city only, and the outside fragments could have been brought into the city if it was deemed necessary to extend police protection to them. (*People ex rel. Bolton v. Albertson*, 55 N. Y. 50.)

All these cases, except the last, involved the right to erect two or more separate and independent municipalities into a new civil division, to authorize officials appointed by the State to perform the duties formerly discharged by local officers and yet leaving the municipalities in full existence and untouched in all other respects.

Acts authorizing State officials to construct public buildings, parks and highways, the expense of which was to be paid
891 locally, have been uniformly sustained, although the power to make such improvements had been previously vested in the local authorities and it was urged that the transfer of the power was an encroachment upon local self-government. (*People ex rel. McLean v. Flagg*, 46 N. Y. 401; *Astor v. Mayor, etc., of N. Y.*, 62 N. Y. 567; *People ex rel. Kilmer v. McDonald*, 69 N. Y. 362; *People ex rel. Com'rs v. Board of Suprs. Oneida Co.*, 170 N. Y. 105.)

To the next group may be assigned statutes which, directly or indirectly, authorized the appointment of local officers by State officials, or the legislature, or extended the terms of local officers already elected, or limited the power of local authorities in the appointment of local officers. Such legislation has been condemned as in manifest violation of home rule. (*Warner v. People*, 2 Den. 272; *Devoy v. Mayor, etc., of New York*, 36 N. Y. 449; *People v. Raymond*, 37 N. Y. 428; *People ex rel. Fowler v. Bull*, 46 N. Y. 57; *People ex rel. Williamson v. McKinney*, 52 N. Y. 374; *People ex rel. Lord v. Crooks*, 53 N. Y. 648; *Rathbone v. Wirth*, 150 N. Y. 459; *People ex rel. Balcom v. Mosher*, 163 N. Y. 32; *Matter of Brenner*, 170 N. Y. 185.) In *People v. Raymond*, which is the chief reliance of the relators, there was an absolute overthrow of the local assessor and the transfer of all his functions to a State officer, which, as the court held, deprived "the people of the city of a right secured to them by the constitution."

The remaining cases decided in this court are not readily classified, but as the validity of the statutes involved was not disturbed, no analysis thereof is necessary. (*People ex rel. Einsfeld v. Murray*, 149 N. Y. 367; *Matter of Allison v. Welde*, 172 N. Y. 421; *People ex rel. Taylor v. Dunlop*, 66 N. Y. 162; *Matter of the Mayor, etc., of N. Y.*, 99 N. Y. 569; *Matter of McPherson*, 104 N. Y. 306; *Matter of Gertum v. Bd. Suprs.*, 109 N. Y. 170; *People ex rel. Kemmler v. Durston*, 119 N. Y. 569; *Koch v. Mayor, etc., of N. Y.* 152 N. Y. 72.)

When new systems have been created for the management
892 of the indigent insane, the infliction of the death penalty or the punishment of convicts, formerly confined by sheriffs in county jails, by imprisonment in penitentiaries, no question seems

to have been raised or claim made that such legislation interfered with the principle of home rule. The absence of adjudicated cases relating to these and other subjects which might be mentioned is not without significance. It is also significant that the revisers of our present constitution, acting but a few years ago, made no change in the home rule provision, as it indicates that they were satisfied with the subject as it had been expounded by the courts and acted upon by the people.

None of the cases cited had to do with such a peculiar situation and novel conditions as faced the legislature when it passed the act to tax special franchises. Certain expressions of learned judges, used *arguendo*, in discussing the subject of home rule, are relied upon by counsel as establishing a principle that controls this case. Principles are not established by what was said, but by what was decided, and what was said is not evidence of what was decided, unless it relates directly to the question presented for decision. "General expressions," as the great Federal jurist once said, "are to be taken in connection with the cases in which those expressions are used." (*Cohens v. Virginia*, 6 Wheat. 264, 399.)

A more specific review of the authorities is unnecessary, for it is sufficient to state that neither singly nor collectively have they so construed the constitution as to prevent the legislature, under the circumstances existing when it sought to promote a sound public policy by passing the act in question, from creating a new system of taxation, embracing within it a new character of property including incidental additions, and committing the power of assessment to a State board of experts.

The remaining questions raised by the relators do not require elaborate consideration. We cannot sustain their position that the taxation of a special franchise impairs the obligation of a contract and thus violates the Federal Constitution. (Art. 1, § 10.)
893 The franchises are grants which usually contain contracts, executed by the municipality, but executory as to the owner. They contain various conditions and stipulations to be observed by the holders of the privilege, such as payment of a license fee, of a gross sum down, of a specific sum each year or a certain percentage of receipts, as a consideration, or "in full satisfaction for the use of the streets." There is no provision that the special franchise, or the property created by the grant, shall be exempt from taxation. Such a stipulation would be void, for no municipality has power to withdraw property from the taxing power of the State, or to provide by ordinance or contract that it shall be free for all time from the common burden which property generally has to bear. Taxation is the rule, with every presumption to support it, while exemption is an exception, with every presumption against it.

The condition upon which a franchise is granted is the purchase price of the grant, the payment of which in money, or by an agreement to bear some burden, brought the property into existence, which thereupon became taxable at the will of the legislature, the same as land granted or leased by the State. There is no implied

covenant that property sold by the State cannot be taxed by the State, which can even tax its own bonds, given to borrow money for its own use, unless they contain an express stipulation of exemption. The rule of strict construction applies to State grants, and unless there is an express stipulation not to tax, the right is reserved as an attribute of sovereignty. Special franchises were not taxed until by the act of 1899 amending the tax law they were added to the other taxable property of the State. This is all that the statute does, so far as the question now under consideration is concerned. No part of the grant is changed, no stipulation altered, no payment increased and nothing exacted from the owner of the franchise that is not exacted from the owners of property generally. No blow is struck at the franchise, as such, for it remains with every right conferred in full force, but, as it is property, it is required to contribute its ratable share, dependent only upon value, toward the support
894 of government. No burden is placed upon it except such as is borne by the homes of the people and money saved for support in old age.

While all attempts of municipalities to undermine or destroy franchises by changing the terms of the grant have been promptly repressed by the courts, there is no case which holds that a franchise, whether general or special, cannot be taxed the same as other private property. The relators accepted their franchises subject to the right of taxation that applies to all property in the State, and we agree with the learned referee that the special franchise tax takes nothing from the grant, exacts nothing as further compensation for the privilege and impairs no contractual obligation.

The further contention of the relators, that the act is impracticable and incapable of execution; that the special franchises should have been separately assessed; that the State Tax Commissioners adopted no rule in making the assessments; that the relators did not have a proper hearing at the time provided for review, and that due process of law was not observed in the taxation of their property, after due consideration we overrule, without further expression of reasons than already appears.

In reviewing these cases we have received great aid from the strong and exhaustive opinion of the late Judge Earl, for many years a distinguished member of this court, who, acting as referee, decided them in the first instance, after full and careful consideration of all the questions involved. It was the last judicial work of that ripe lawyer and eminent jurist, and we regard his decision as one of the most able and profound judgments ever pronounced by him during his long and useful career.

The order of the appellate division should be reversed and judgment of the special term affirmed, in each proceeding, with costs.

Parker, Ch. J., O'Brien, Bartlett, Martin, Cullen and Werner, JJ., concur.

Order reversed, etc.

895 STATE OF NEW YORK, } ss:
County of Albany, }

I, W. H. Shankland, clerk of the court of appeals of State of New York, do hereby certify that I have compared the annexed copy of the opinion made by said court in the case of The People of the State of New York *ex rel.* Central Crosstown Railroad Company, respondent, against State Board of Tax Commissioners, appellant, with the original thereof on file in this office, and find the same to be a true transcript of and from said original and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this 29th day of June 1903.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND,
Clerk of Court of Appeals of State of New York.

896 [Endorsed:] Supreme Court of United States. People of the State of New York *ex rel.* Central Crosstown Railroad Company, plaintiff in error, against State Board of Tax Commissioners, defendant in error. Opinion and certificate of clerk of court of appeals. George S. Bixby, attorney for plaintiff in error, 71 Broadway, New York.

Endorsed on cover: File No. 18,997. New York supreme court. Term No. 346. The People of the State of New York *ex rel.* The Central Crosstown Railroad Company, plaintiff in error, *vs.* The State Board of Tax Commissioners. Filed July 7th, 1903.

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JAMES H. McKENNEY,
Cl

[18,995–19,000.]

SPECIAL FRANCHISE TAX CASES.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE METROPOLITAN STREET RAILWAY COMPANY,

Plaintiff in error,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

In error to the Supreme Court of the State of New York.

No. 74.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE TWENTY-THIRD STREET RAILWAY COMPANY,

Plaintiff in error,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

In error to the Supreme Court of the State of New State.

No. 75.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE CENTRAL CROSSTOWN RAILROAD COMPANY,

Plaintiff in error,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

In error to the Supreme Court of the State of New York.

No. 76.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE CONSOLIDATED GAS COMPANY OF NEW YORK,

Plaintiff in error,

vs.

THE STATE BOARD OF TAX COMMISSIONERS.

In error to the Supreme Court of the State of New York.

No. 77.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE NEW AMSTERDAM GAS COMPANY,
Plaintiff in error,
vs.
THE STATE BOARD OF TAX COMMISSIONERS. } No. 78.
In error to the Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE BROOKLYN CITY RAILROAD COMPANY,
Plaintiff in error,
vs
THE STATE BOARD OF TAX COMMISSIONERS. } No. 79.
In error to the Supreme Court of the State of New York.

MOTION TO PASS CASES.

The plaintiffs in error in the above entitled cases move upon the records that the cases be passed, to be reinstated on joint request for call on the second Monday of April, 1905, after the cases already assigned for that day, and respectfully submit the following reasons why the motion should be granted, viz.:

I.

These cases involve the constitutionality of the act of the legislature of New York, approved May 26, 1899 (ch. 712 of the Laws of 1899), and entitled "An act to amend the tax law in relation to the taxation of public franchises as real property," which act levied a tax upon the special franchises possessed by the plaintiffs in error. It will be claimed by the plaintiffs in error that the act is in conflict with the constitution of the United States, in that it impairs

the obligation of the contracts contained in the franchise grants, deprives the plaintiffs in error of their property without due process of law, and denies to them the equal protection of the laws. The cases are numbered from 74 to 79, inclusive, upon the docket for 1904, and have been set down for call on the first Monday of April, 1905.

Since the date of the filing of the consent reinstating these cases and the order setting them down for call on the first Monday of April, 1905, counsel for plaintiffs in error have become engaged in a matter of great intricacy and importance, involving large public interests, as well as the interests of the State of New York, which is now pending before the Superintendent of Insurance of the State of New York, and the consideration of proposed legislation, as well as an application for the institution of proceedings by the Attorney-General of said State. On account of the expected adjournment of the New York legislature at an early date, it has been found impossible for counsel to postpone these matters in which they have become involved, and they have, therefore, found it impracticable to complete their preparations for argument of these cases, in the manner demanded by the scope and difficulty of the questions involved, prior to the date at which the cases will probably be reached upon the regular call.

II.

The plaintiffs in error therefore pray that the above entitled cases be passed under Rule 26.

Washington, April 3, 1905.

ELIHU ROOT,
WILLIAM D. GUTHRIE,
JAS. RUSSELL SOLEY,
CHARLES A. COLLIN,
Of counsel for plaintiffs in error.

In view of the facts set forth in the foregoing application, I consent to the granting thereof.

JULIUS M. MAYER, *Attorney-general,*
Of counsel for defendants in error.